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1911

STATE OF MICHIGAN

LAWS RELATING TO

RAILROADS

SUPPLEMENT TO PAMPHLET COMPILATION OF 1909

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1911

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1911

MICHIGAN RAILROAD COMMISSION.

CASSIUS L. GLASGOW, CHAIRMAN.

GEORGE W. DICKINSON, COMMISSIONER.

LAWTON T. HEMANS, COMMISSIONER.

Note.—The numbers in parentheses, (), are compiler's sections and agree with corresponding sections of the pamphlet compilation of 1909. These are used for ready reference to show amendments made by the Legislature of 1911.

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RAILROADS—CHAPTER II.

MICHIGAN RAILROAD COMMISSION.

[P. A. 173 of 1911, amending Act 300 of 1909.]

(43) SEC. 3. (a) The term "common carrier" as used in this act shall be construed to mean and embrace all corporations, companies, individuals, associations of individuals, their lessees, trustees or receivers appointed by any court whatsoever who now or may hereafter own, operate, manage or control as a common carrier in this state, any railroad or part of any railroad, whether operated by steam, electricity or other motive power, or cars or any other equipment used thereon, or bridges, switches, spurs, tracks, sidetracks, terminal facilities, or any docks, wharves or storage elevators used in connection therewith or any kind of terminal facilities used or necessary in the transportation of persons or property designated herein, and also all freight depots, yards and grounds used or necessary for the transportation or delivery of any said property and whether the same are owned by said railroad or otherwise; or any express company, car loaning companies, freight or freight line companies and all associations or persons, whether incorporated or otherwise, that shall do business as common carriers upon or over any line of railroads in this state, or any common carrier engaged in the transportation of passengers and property wholly by rail or partly by rail and partly by water. "Common carrier" defined.

(44) (b) The term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment, or carriage, irrespective of ownership, or of any contract expressed or implied for the use thereof, and all services in connection with the receipt, delivery, elevation, switching and transfer in transit, ventilation, refrigeration or icing, storage and handling of persons or property transported. "Transportation" defined.

(45) (c) The term "railroad" as used in this act shall be construed to mean all railroads, whether operated by steam, electric or other motive power: Provided, That the provision of this act shall not apply to any logging or other private railroad not doing business as a common carrier: Provided further, Nothing in this act contained shall be construed to authorize the commission to interfere with, lessen or impair or to authorize the impairment of any franchise provision, contract or agreement as to rate of fare now exist- "Railroad" defined.
Proviso.
Further proviso.

Further
proviso.

ing between any municipality, city, village, or township and any tram railway, street railway, interurban or suburban railway company, or to increase or lessen the rate of fare fixed by such franchise, contract or agreement, or to deprive any tram railway, street railway, interurban or suburban railway company of the right to charge for the carriage of passengers the rate of fare authorized and fixed by any franchise, grant or contract made or entered into between any municipality, city, village or township and any such tram railway, street railway, interurban or suburban railway company: Provided further, That nothing in this act contained shall apply to street and electric railroads engaged solely in the transportation of passengers within the limits of cities or within a distance of five miles of the boundaries thereof.

Property,
etc., trans-
portation of.

(46) (d) The provisions of this act shall apply to the transportation of passengers and property between points within this state, and to the receiving, switching, delivering, storing and handling of such property, and to all charges connected therewith, including icing and mileage charges: Provided, however, That this provision shall not be construed as a limitation on the authority of the commission created by this act to prescribe car service and demurrage rules applicable to all traffic beginning or ending within this state.

Proviso.

Express com-
panies, etc.

(47) (e) Express companies and sleeping car companies doing business for hire within this state are hereby defined to be common carriers.

[P. A. 139 of 1911, amending Act 300 of 1909.]

Interchange
of traffic.

(55) SEC. 7. (a) All railroads, subject to the provisions of this act, shall afford all reasonable and proper facilities by the establishment of switch connections between one another and the establishment of depots and otherwise for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall transfer and deliver without unreasonable delay or discrimination any freight or cars or passengers destined to any point on its own line or on any connecting line, and shall not discriminate in their rates and charges between such connecting lines: Provided, Precedence may be given to live stock and perishable property. Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business. Any person or any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier subject to the provisions of this act shall have the right and privilege of routing

Proviso,
precedence.

Routing.

such shipments and of prescribing and directing over what connecting line property so shipped shall be transported, and it shall be the duty of the initial carrier to observe the direction of such person or such officer or agent of any corporation or company, and to cause such freight to be transported over such connecting line as may be directed and required by such shipper. When freight is shipped in intrastate commerce and any person or officer or agent of any corporation or company who shall deliver property for transportation does not prescribe over what connecting line such property shall be transported, it shall be the duty of the initial carrier to so route the freight as to give the property the benefit of the lowest rate published between points of origin and destination;

(56) (b) Where it is practicable and the same may be accomplished without endangering the equipment, tracks or appliances of either party, the commission may, upon application, require steam railroads and interurban and suburban railroads to interchange cars, carload shipments, less than carload shipments and passenger traffic, and for that purpose may require the construction of physical connections upon such terms as it may determine: Provided, That nothing in this act shall be construed to require through billing of freight as between steam and electric, suburban or interurban railroads, but such suburban and interurban railroads may be used for the handling of freight in carload lots in steam railroad freight cars between shippers or consignees and the steam railroads, in the same manner and under the same general conditions, except as to motive power, as belt line railroads and terminal railroads are now or may hereafter be used for like purposes;

(57) (c) Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks: Provided, Such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise safe for transportation and properly loaded: Provided further, If the corporations cannot agree upon the times at which the cars shall be drawn or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and interests of the corporation or corporations and the public to be accommodated thereby, and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised;

(57a) (d) Every common carrier operating within this state shall receive and transport at reasonable rates any and all carload traffic offered for transportation under the usual conditions locally consigned between points in the same city or town and shall receive and transport at reasonable rates

Team
tracks, etc.

Proviso,
private
sidings.

When de-
livery can-
not be ac-
complished.

from any junction point or transfer point or intersection with another railroad in such city or town any and all such carload freight destined to team tracks or other sidings on any line operated by the delivering carrier, and shall deliver such car or cars upon such team tracks or sidings in the city or town where such car or cars are received from such connecting line when required so to do: Provided, That when delivery is requested which will involve the use of a private siding not owned or controlled by consignee, said consignee shall file with both receiving and delivering carriers written permission signed by the owner or lessee of such private siding authorizing the use of same. When the particular delivery desired cannot be accomplished owing to the congestion of cars upon such siding or team tracks, it shall be the duty of the delivering carrier to notify consignee of such conditions and it shall be the duty of such consignee upon receipt of such notice to advise upon what other siding delivery will be accepted or whether or not it is desired that such car or cars shall be held awaiting the opportunity for delivery upon the siding originally designated as the destination.

[P. A. 173 of 1911, amending Act 300 of 1909.]

Railroad to
furnish cars.

Proviso,
preference.

(58) SEC. 8. Every railroad shall, when within its power so to do, and upon reasonable notice, furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight in carload lots. Every common carrier shall have sufficient cars and motive power to meet all requirements for the transportation of passengers and property which may reasonably be anticipated. In case of insufficiency of cars at any time to meet all requirements, such cars as are available shall be distributed among the several applicants therefor without discrimination between shippers or between points of shipment, whether competitive or non-competitive: Provided, Preference may be given to shipments of live-stock and perishable property. The commission shall have power to make and enforce, and shall make and enforce reasonable regulations for the furnishing and distribution of freight cars to shippers and switching the same, and for the loading and unloading thereof, and for the weighing of the cars and the freight offered for shipment over any line of railroad and shall fix a reasonable per diem demurrage to be paid for the detention of cars by shipper or consignee (which said car service and demurrage rules and regulations shall be applicable to all traffic whether the same begin or end within the state of Michigan), and for the failure or delay of the railroad in the furnishing of such cars and for the failure of the railroad to move the cars the number of miles per day as ordered by the commission.

[Act 139 of 1911, amending Act 300 of 1909.]

(60) SEC. 10. (a) Every common carrier subject to the provisions of this act shall file with the commission created by this act and print and keep open to public inspection in each of its depots and offices, schedules showing all rates, fares and charges for transportation, both of passengers and property, between different points on its own route, and between points on its own route and on the route of any other carrier, when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid the separately established rates; fares and charges applied to the through transportation. The schedules printed as aforesaid by any common carrier, shall plainly state the places between which property and passengers will be carried and shall contain the classification of freight in force and shall also state separately all terminal charges, storage charges, icing charges and all other charges which the commission may require, all privileges or facilities granted or allowed and any rules or regulations which in anywise change, affect or determine any part of or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered to the passengers, shipper or consignee: Provided, That where local switching tariffs are in effect at a competitive point, it shall be sufficient if the schedule state that the terminal charges shall be subject to the rules of such local switching tariffs. Such schedules shall be printed plainly in large type, and copies for the use of the public shall be kept on file for public inspection in every depot, station or office of such carrier where passengers or freight respectively are received for transportation or where tickets are sold, in such form that they will be accessible to the public and can conveniently be inspected. The provisions of this section shall apply to all traffic and transportation and facilities defined in this act;

(61) (b) No change shall be made in the schedule of rates, fares or charges or joint rates, fares or charges which have been filed and published by common carriers in compliance with the requirements of this section, except after ten days' notice to the commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule of rates, fares or charges or joint rates, fares or charges, then in force and the time when such changed rates, fares or charges or joint rates, fares or charges will go into effect, and no such rates, fares or charges or joint rates, fares or charges shall be discontinued, except after giving such notice as is required for changing rates, fares or charges or joint rates, fares or charges, and the proposed changes in such rates, fares or charges or joint rates, fares

Schedule
of rates, etc.

What to state.

Proviso,
local switch-
ing tariffs.

Change of
rates, etc.,
notice of.

Proviso.	or charges shall be shown by printing and filing new tariffs thereto or by showing such changes or discontinuance by issuing and filing of supplements in the regular manner now provided and keeping same open to public inspection: Provided, That the commission may, in its discretion and for good cause shown, allow changes upon less time than the notice herein specified, or modify the requirements in this section in respect to publishing, posting and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions: Provided further, That upon the filing with the commission by a common carrier of any tariff or supplement showing any change in rates, fares or charges or joint rates, fares or charges or a discontinuance of any rate or rates, fares or charges or joint rates, fares or charges, its shall be lawful for the said commission and it is hereby authorized acting upon its own initiative or upon complaint to postpone the date when such new rate or rates or joint rates, fares or charges or discontinuance of rate or rates or joint rates, fares or charges, shall become effective to such time not to exceed in all forty-five days as shall give the said commission opportunity to investigate the reasonableness of such proposed rate or rates or discontinuance of rate or rates, and it shall thereupon be lawful for said commission and it is hereby authorized to proceed with all convenient speed with an investigation upon at least five days' notice to said common carrier either upon its own initiative or upon complaint as to the reasonableness of said rate or rates, or the discontinuance of said rate or rates, follow the procedure as near as may be, and make its order therein in the manner hereinafter provided in section twenty-two of this act, such investigation to take precedence of all matters of a different nature pending before the commission.
Joint tariff concurrence.	(62) (c) The names of the several carriers which are parties to any joint tariff shall be specified therein and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission, and where evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties;
Form of schedule.	(63) (d) The commission may determine and prescribe the form in which the schedules required by this section to be kept open to the public inspection shall be prepared and arranged and may change the form from time to time as may be found expedient;
Conformity.	(64) (e) Such schedules shall, so far as is practicable, conform to the forms prescribed by the interstate commerce commission;
Irregular rates, etc.	(65) (f) No carrier, unless otherwise provided by this act, shall engage or participate in the transportation of pas-

sengers or property as defined in this act, unless the rates, fares and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this act, nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property or for any service in connection therewith between the points named in such fares and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares and charges so specified, nor extend to any shipper or person any privilege or facilities in the transportation of persons or property, except such as are specified in such tariff;

(66) (g) Within six months after the delivery of any shipment of freight at destination any person aggrieved may complain to the commission that the charge exacted for the transportation of such freight between points in Michigan is irregular or exorbitant, and thereupon the commission shall have power to investigate such complaint, and to hear the same and to decide upon the merits thereof, in the manner provided by section twenty-two of this act. If, upon such hearing, the commission shall decide that the rate or charge exacted is irregular or exorbitant it shall find what, in its judgment, would have been a reasonable rate or charge for the service complained of. If the rate or charge so found shall be less than the charge exacted the carrier shall have the right to refund to the person paying such charge the amount so found to be excessive. In case of the refusal of the carrier to make such refund, the party aggrieved thereby may maintain an action in the courts of this state to recover the amount of such excessive charge as found by said commission, and in the trial thereof the findings of the commission shall be prima facie evidence of the truth of the facts found by it, and no carrier shall be permitted to avail itself of the defense of such action that the shipment involved was in fact made on the published tariff rate in force at the time such shipment was made, but no carrier making a refund upon the order of the commission or pursuant to a judgment of court as herein provided, shall be liable for any penalty or forfeiture, or subject to any prosecution under the laws of this state on account of making such refund;

(67) (h) In time of war or threatened war preference and precedence shall, upon the demand of the governor of the state, be given over all other traffic to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic;

(68) (i) Every common carrier within this state shall within ninety days, unless further time be granted by the commission, file in the office of the commission copies of all schedules of rates, including joint rates in force on its line or

Complaints,
etc., how
made.

Hearing.

Action to
recover.

Transporta-
tion of troops.

Schedule
of rates,
filing of.

lines between points within this state on the date this act takes effect, not previously filed by such carrier with the Michigan railroad commission.

Control of
sidetracks,
etc.

Notice to
public, etc.

Proviso.

Further
proviso,
postponement.

Authority
to proceed.

(73) SEC. 14. The commission shall have control and jurisdiction over all sidetracks, spurs and branches insofar as the same are used or operated by common carriers. No change or discontinuance in the service from, to or on such sidetracks, spurs and branches or abandonment or removal of said sidetracks, spurs or branches, except sidetracks or spurs solely required for the convenient operation of its engines and trains and private industrial sidetracks, shall be made except after ten days' notice to the commission and to the public published as aforesaid, which shall plainly state the change or discontinuance proposed to be made in such service or the sidetrack, spur or branch proposed to be abandoned or removed and the time when such change, discontinuance or abandonment or removal will go into effect; and the proposed change, discontinuance or abandonment or removal shall be shown by printing and filing new tariffs or notice thereof or by showing such change, discontinuance or abandonment or removal by issuing and filing supplements or notice in the regular manner now provided and keeping same open to public inspection: Provided, That the commission may allow changes upon less time than the notice herein specified or modify the requirements in this section in respect to publishing and posting of tariffs either in particular instances or by a general order applicable to special or peculiar circumstances or conditions: Provided further, That it shall be lawful for the said commission and it is hereby authorized, acting upon its own initiative or upon complaint, to postpone the date when such change, discontinuance or abandonment or removal shall become effective to such time not to exceed in all forty-five days as shall give the said commission opportunity to investigate the reasonableness of such proposed change, discontinuance or abandonment or removal, and it shall thereupon be lawful for such commission, and it is hereby authorized to proceed with all convenient speed with an investigation upon at least five days' notice to said common carrier, either upon its own initiative or upon complaint as to the reasonableness of said change, discontinuance or abandonment or removal, and shall follow the proceedings as near as may be and make its orders thereon either approving or refusing such change, discontinuance or abandonment or removal or prescribing the terms and conditions upon which such change, discontinuance or abandonment or removal shall be made, in the manner hereinafter provided in section twenty-two of this act, such investigation to take precedence of all matters of a different nature pending before the commission, except investigations as to change or discontinuance of rates, fares or charges or joint rates, fares or charges then pending before said commission.

(91) SEC. 25. All rates, fares, charges, classification and joint rates fixed by the commission and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie, lawful and reasonable until finally found otherwise in an action brought for the purpose pursuant to the provisions of section twenty-six of this act, or until changed or modified by the commission as provided for in section twenty-four of this act. Rates, etc.,
to be lawful.

(91a) (a) It shall be unlawful for any express company operating or doing business in the state of Michigan to charge or collect a greater amount for the transportation of merchandise or other property within this state than the rates and charges set forth and contained in the schedule of rates, tariffs and classifications on file at each station and office to or from which said rates, tariffs and classifications are intended to apply; a copy of which said schedule of rates, tariffs and classifications shall be filed with the railroad commission by the issuing carrier or some duly authorized agent or representative of such carrier; Express
companies.

(91b) (b) It shall be unlawful for any express company operating and doing business in the state of Michigan to discriminate in favor of or against any shipper or shippers or to refuse or fail to receive and transport proffered merchandise or other property, providing such merchandise or other property is a proper subject for shipment by express and in proper condition at the time of presentation for shipment from any point where such express company shall maintain or conduct an office or station, or to or from any junction point or points where the line of such express company intersects with the line of any other express company or to or from any common terminal to any point on its own line, and the charge and compensation for the transportation of such merchandise or other property by two or more express companies shall not exceed by thirty per cent the maximum charge for the same distance on any one line, such maximum charge being determined as hereinafter prescribed: Discrim-
ination.

Proviso.

(91c) (c) All express companies operating within this state shall publish and continue in force and effect through or joint rates between all points at which offices are maintained on the line of all express companies operating within the state of Michigan: Provided, That such express companies may divide charges for transportation in such a manner as to allow participating carriers an agreed minimum proportion when the division of such charges on a mileage basis would not allow a sufficient minimum; Express
companies
to file rates.

Proviso.

(91d) (d) The following schedule of rates shall be the present maximum basic general merchandise schedule chargeable within the state of Michigan: Basic
schedule.

One to fifty-five miles inclusive, fifty cents per one hundred pounds;

Fifty-six to seventy-five miles inclusive, fifty-five cents per one hundred pounds;

Seventy-six to eighty-five miles inclusive, sixty cents per one hundred pounds;

Eighty-six to ninety-five miles inclusive, sixty-five cents per one hundred pounds;

Ninety-six to one hundred five miles inclusive, seventy cents per one hundred pounds;

One hundred six to one hundred thirty miles inclusive, seventy-five cents per one hundred pounds;

One hundred thirty-one to one hundred fifty miles inclusive, eighty cents per one hundred pounds;

One hundred fifty-one to one hundred seventy miles inclusive, eighty-five cents per one hundred pounds;

One hundred seventy-one to one hundred ninety miles inclusive, ninety cents per one hundred pounds;

One hundred ninety-one to two hundred ten miles inclusive, one dollar per one hundred pounds;

Two hundred eleven to two hundred thirty miles inclusive, one dollar ten cents per one hundred pounds;

Two hundred thirty-one to two hundred fifty miles inclusive, one dollar twenty cents per one hundred pounds;

Two hundred fifty-one to two hundred seventy-five miles inclusive, one dollar thirty cents per one hundred pounds;

Two hundred seventy-six to three hundred miles inclusive, one dollar forty cents per one hundred pounds;

Graduated
schedule.

(91e) (e) The graduated table or schedule of charges now in force relating to shipments of merchandise or other property in quantities less than one hundred pounds shall continue in operation except as hereinafter provided;

Supervis-
ion of
express
companies.

(91f) (f) The Michigan railroad commission shall have control and supervision over all express companies operating within this state, and upon complaint made to it or upon its own motion and after hearing had thereon, in accordance with the rules now in force relative to hearings on complaints by and against common carriers, may from time to time within its discretion change, alter and amend the maximum schedule of rates hereinbefore set forth, and may from time to time upon proper application or upon its own motion and hearing had thereon, as above prescribed, change, alter and amend any graduated table or schedule of charges on merchandise or other property transported or to be transported, the weight of which is less than one hundred pounds;

Forward-
ing of
shipments.

(91g) (g) Any express company operating or doing business within the state of Michigan, upon receipt of any property or merchandise, providing such property or merchandise is a proper subject for shipment by express and in proper condition at time of presentation, shall unless otherwise requested by the shipper forward same via the nearest and most practical route, having in mind the frequency of train service at different junction points.

TRANSPORTATION OF EXPRESS PACKAGES.

An Act to regulate charges for transporting express packages; to prescribe certain regulations for forwarding the same; to prohibit the establishment of joint agencies by express companies; and to provide for the enforcement of the provisions of this act.

[P. A. 273 of 1911.]

The People of the State of Michigan enact:

SECTION 1. Hereafter it shall be unlawful for any express company, doing business in this state, to charge or receive, or cause to be charged or received for them, any greater amount than twenty-five cents for transporting and delivering any package of merchandise not exceeding five pounds in weight and ten dollars in value from any point within this state to any other point within this state. The rate provided in this section shall be in full for the collecting and delivering of said packages within the limits of any municipality where delivery service by said company is maintained. Express rates, regulation of.

SEC. 2. All packages received for transportation between points within this state shall be forwarded by the shortest railroad route, or railroad and boat route, between said points unless otherwise specifically directed by the shipper. In cases where packages are received by a company not operating over the shortest route, the package or packages shall be turned over by said company to the company operating over the shortest route and by the latter company shall be forwarded. No extra charge shall be made by the company first receiving such package or packages for transferring to the company operating over the shortest route between said points. Route, for transportation.

SEC. 3. Hereafter it shall be unlawful without the specific permission of the Michigan railroad commission for any two or more express companies, doing business in this state, to maintain in any city or village a joint office or to employ the same person to act as joint agent for the said companies: Provided, That the provisions of this section shall not apply to offices maintained at railroad stations or junction points, for the receipt and forwarding of express matter. Joint agent. Proviso.

SEC. 4. Any express company, or its agents or representatives, that shall violate any of the provisions of this act shall be liable to a fine of one hundred dollars, for each such violation, to be recovered in an action in the name of the people of the state of Michigan. Penalty.

CHAPTER III.

RAILROAD, BRIDGE AND TUNNEL COMPANIES.

[Act 33 of 1911, amending Act 198 of 1873.]

Number may
incorporate.Articles,
what to
set forth.

When filed.

(129) § 6223. SECTION 1. It shall be lawful for any number of persons, not less than seven, to organize themselves into a corporation for the purpose of constructing, operating, and maintaining a railroad, railroad bridge or railroad tunnel; and for such purpose such persons shall subscribe articles of association, in which shall be set forth the name of the corporation, the number of years the same is to be continued, the amount of capital stock of said company, which shall not be less than four thousand dollars per mile of road constructed or proposed to be constructed with flat-bar rail, or with a gauge not exceeding three feet six inches in width, and not less than eight thousand dollars per mile of road constructed or proposed to be constructed of "T" rails with gauge exceeding three and one-half feet in width, and not less than one-half the estimated cost of any such bridge or tunnel; the number of shares of which the stock shall consist, which shall be of the amount of one hundred dollars each; the number of directors, which shall not be less than five nor more than fifteen, and their names; the places from and to which and the name of each county into or through which it is or is intended to be constructed, and its length as near as may be. Each subscriber to such articles of association shall set opposite his name his place of residence, and the number of shares of stock by him subscribed. Whenever five hundred dollars per mile of such railroad, or one-half the estimated cost of such bridge or tunnel, shall have been subscribed upon such articles of association, and five per cent of the amount thereof shall have been paid in to the directors named in such articles, in good faith, in cash, and an affidavit shall have been made and attached thereto by any two of said directors, that said amount has been subscribed, and said amount of five per cent paid in, in good faith, in cash, as before provided, such articles of association shall be filed in the office of the secretary of state, and thereupon the persons who have subscribed such articles, and all other persons who shall from time to time thereafter subscribe to or become the holders of the capital stock of said corporation, in the manner to be provided in its by-laws, shall be a body corporate, by the name specified in such articles, and shall be capable of suing and being sued, and may have a common seal, and may make and alter the same at pleasure, and be capable in law of purchasing, holding, and conveying any real and personal property whatever necessary for the construction, maintenance and operation of said railroad, railroad bridge or rail-

road tunnel; and for the erection of all necessary buildings, yards, and appurtenances for the use of the same: Provided, That any such company existing in whole or in part under the laws of this state, at any general or special meeting of the stockholders called and held pursuant to the provisions of this state in that behalf, may increase or decrease the number of its directors provided for in its articles of association, by a resolution to that effect: Provided, That two-thirds of the entire stock of the company shall be voted therefor: Provided further, That in no case shall the number of the directors be less than five nor more than fifteen. A copy of any resolution so passed shall be certified by the secretary of the company and shall be filed and recorded in the office of the secretary of state in like manner as provided by law for the filing and recording of articles of incorporation of railroad companies.

Proviso,
directors.

Proviso.
Further
proviso.

Resolutions,
filing of.

[Act 276 of 1911, amending Act 198 of 1873.]

(140) § 6234. SEC. 9. Every such corporation shall possess the general powers and be subject to the liabilities and restrictions following, that is to say:

General
powers.

First. To cause such examinations and surveys of the proposed railroad or railroad bridge or tunnel to be made as may be necessary to the selection of the most advantageous route for the road, and for such purposes by its officers, agents and servants to enter upon lands or waters of any person or company, but subject to liability for all damages which they shall do thereto: Provided, That it shall not be lawful for any such corporation by its officers, agents or servants to enter upon the land or water of any person or company to make any such examination or survey until such corporation shall have made, executed and delivered to the judge of probate of the county where such land or water lies, a bond to be approved by him, with two sufficient sureties running to the judge of probate of said county in his official name, for the use of any person interested, in the penal sum of five thousand dollars, conditioned upon the payment by such corporation of all damages sustained by any person or company on occasion of any such examination or survey. Upon the delivery of such bond to such judge of probate and its approval by him, he shall file the same in his office, and when so filed it shall be deemed a public record and may be proved in court by a certified copy thereof. Any person or company having a claim for damages arising under this section, may bring suit upon said bond in any court of said county having jurisdiction over the amount claimed in damages;

Surveys,
right of.

Proviso, bond.

Damages.

Second. To receive, hold and take such voluntary grants and donations of real estate and other property as shall be

Real estate,
grants of, etc.

made to it to aid in the construction, maintenance and accommodation of such road or railroad bridge or tunnel, but the real estate thus received by voluntary grant shall be held and used for the purpose of such grant only;

To take
possession,
compensa-
tion, etc.

Third. To purchase, and by voluntary grants and donations, receive, take and by its officers, engineers, surveyors and agents, enter upon and take possession of, hold and use all such lands and real estate, franchises and other property as may be necessary for the construction, maintenance and accommodation of its railroad or railroad bridge or railroad tunnels, stations, depots and other accommodations; but the same shall not be appropriated until the compensation to be made therefor is agreed upon by the parties, or ascertained as herein prescribed, to be paid to the owners or deposited as hereinbefore directed, unless the consent of such owner be given therefor;

Right of
way, etc.

Fourth. To lay out its road not exceeding one hundred feet in width, and to lay out its bridge or tunnel and its bridge or tunnel approaches not exceeding two hundred feet in width, and to construct the same, and for the purpose of cuttings and embankments and for procuring stone, gravel or other material or for the purpose of draining its road bed or tunnel, to take in the manner herein provided such further lands adjacent to and in the vicinity of its road or tunnel, as may be necessary for the proper construction, operation and security of its road or tunnel;

Bridges
and tunnels.

Fifth. To construct its road or bridge over, upon or across, or its railroad tunnel under any stream of water, water course, private road, street, lane, alley or highway, and across or under any plank road, railroad or canal, which the route of its road or railroad bridge or railroad tunnel shall lie along or intersect; but the corporation shall restore the stream, water course, private road, street, alley, lane, highway, plank road, railroad or canal to its former state as near as may be, but shall not materially obstruct the navigation of any stream, nor obstruct any public highway or street by cars or trains for more than five minutes at any one time, and the railroad commission shall have the authority to cause the removal of switches that are so located with reference to public highways or streets that by reason of the constant switching or shunting of cars the use of the public highway or street is materially obstructed, impeded or delayed; and such corporation shall construct suitable road and street crossings for the passage of teams by fitting down planks between and on each side of the rails of such road, the top of which shall be at least one-half inch higher than the top of the rails of such road; and in case of the construction of such railway upon any public street, lane, alley or highway, the same shall be on such terms and conditions as shall be agreed upon between the railroad company and the common council of any city, or the village board of any village, or the commissioners of highways of any township in

Road
crossings,
construc-
tion of.

which the same may be; but such railway shall not be constructed upon any public street, lane, alley, highway or private way until damages and compensation be made by the railroad company therefor to the owner or owners of property adjoining such street, lane, alley, highway or private way and opposite where such railroad is to be constructed, either by agreement between the railroad company and each owner or owners, or ascertain as herein prescribed for obtaining property or franchises for the purpose of its incorporation to be paid to the owner thereof or deposited as hereinafter directed;

Compensation for damages.

Sixth. To cross, join and unite its railroads, bridge or tunnel with any other railroad now or hereafter constructed under any law whatever at any point on its route, and upon the grounds of such other railroad now or hereafter constructed with the necessary turnouts, sidings and switches and other accommodations and conveniences, in furtherance of the objects of its connections; and to make all such business arrangements as said companies may agree upon. Every company whose railroad shall be intersected by any other railroad shall unite with the owners of such other railroad in forming such intersections and connections, and grant facilities for the same as hereinafter provided;

Intersections, connections, etc.

Seventh. To take, transport, carry and convey persons and property on their said road or bridge or through such tunnel by the force and power of steam, animals or any mechanical power or by any combination of them, and to receive tolls and compensation therefor;

Steam power, etc.

Eighth. To erect and maintain all necessary and convenient buildings, stations, depots, fixtures and machinery for the accommodation and use of their passengers, freight and business, and to obtain and hold all the lands necessary therefor;

Equipment.

Ninth. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor; but such compensation for transporting any passenger and his or her ordinary baggage, not exceeding in weight one hundred fifty pounds, shall not exceed the following prices, viz: For a distance not exceeding five miles, three cents per mile; for all other distances for all companies the gross earnings of whose passenger trains, as reported to the commissioner of railroads for the year nineteen hundred six, equaled or exceeded the sum of one thousand two hundred dollars per mile for each mile of road operated by said company, on which regular passenger service is maintained, as hereinafter provided, two cents per mile, and for all companies whose earnings reported as aforesaid were less than one thousand two hundred dollars per mile of road operated by said company, three cents per mile: Provided, That in the future, whenever the earnings of any company doing business in this state, as reported to the railroad commission at the close of any year, shall increase so as

Fares, baggage.

Rates.

Proviso.

Further
proviso,
computation
of earnings.

Further
proviso,
children.

Further
proviso,
minimum
fare.

Further
proviso,
non-com-
pliance.

Section,
how applied.

to equal or exceed the sum of one thousand two hundred dollars per mile of road operated by said company, then in such case said company shall thereafter, upon the notification of the railroad commission, be required to only receive as compensation for the transportation of any passenger, his or her ordinary baggage, not exceeding in weight one hundred fifty pounds, a rate of only two cents per mile as hereinbefore provided: Provided further, That in computing the passenger earnings per mile of any company the earnings and mileage of all branch roads owned, leased, controlled or occupied or that may hereafter be owned, leased, controlled or occupied by such company, exclusive of all spurs and branches over which such company does not operate each way daily, except Sunday, at least one passenger train, or mixed train having at least two passenger coaches or one passenger coach and baggage car, shall be included in the computation, and the rate of fare shall be the same on all lines owned, leased, controlled or occupied by such company: Provided further, That no company shall charge, demand or receive any greater compensation per mile for transportation of children of the age of twelve years or under than one-half the rate herein prescribed: Provided further, That any railroad company may charge a minimum fare of five cents for each passenger transported over its road, whenever cars are propelled or moved by motive power other than steam: Provided further, That any railroad company which shall, within thirty days after notification by the railroad commission fail to comply with the provisions of subdivision nine of this section, shall immediately after such failure become liable to the people of the state of Michigan in a penalty of five hundred dollars per day for each and every secular day during the pendency of such failure, which said penalty shall be collected in an action to be brought by the railroad commission in any court of competent jurisdiction within this state, and which said penalty when collected shall be paid into the state treasury and credited to the primary school fund. The penalty in this section mentioned shall be supplemental to and shall not be deemed to supersede any extraordinary remedy by mandamus or otherwise authorized by law, to be instituted by the state, the railroad commission or any state officer or board to compel compliance with section one of this act. The provisions of this section shall apply to all railroad companies operating lines of railroad in this state, whether such companies are organized under the general railroad law or under any special charter from the state legislature.

[Act 33 of 1911, amending Act 198 of 1873.]

(173) § 6267. SEC. 42. Any railroad company, any railroad bridge company or any railroad tunnel company organized under this act shall possess the power to acquire, either by purchase or condemnation, and to own the same, an amount of land at any and all places on the line of its railroad or in the vicinity of its bridge or tunnel sufficient to afford the necessary yards, terminals and freight and passenger depot accommodations for its own business and the business of any companies operating a railroad, bridge or tunnel at the same place, with which it may make an agreement to furnish such accommodations, and also for the necessary rights of way to afford such companies access thereto.

Land, may
condemn, etc.

[Act 39 of 1911, amending Act 198 of 1873.]

(220) § 6316. SEC. 26. The words "ordinary baggage" and "baggage" wherever used in this act and in the acts amendatory thereto, shall be deemed to include bicycles, baby carriages and go-carts, and no passenger shall be required to crate, cover or otherwise protect any such baggage: Provided, Each passenger shall be entitled to have but one bicycle, baby carriage or go-cart transported under the provisions of this act.

"Ordinary
baggage,"
etc., what
deemed.

Proviso.

(221) § 6317. SEC. 27. All railroad companies shall equip their baggage cars with hooks, racks or other appliances for the safe and convenient storage and transportation of bicycles, baby carriages and go-carts. Such hooks, racks or other appliances shall be of such construction as not to scratch, mar or injure the bicycle, baby carriage or go-cart in any way. Any railroad company whose baggage cars are equipped as above provided shall not be liable for any damage to any bicycle, baby carriage or go-cart while being stored or transported, unless such damage results from carelessness or negligence of its employees.

Equipment.

Liability.

ADMISSION OF FOREIGN CORPORATIONS.

[Act 266 of 1911, amending Act 206 of 1901.]

Certificate
of authority.Proviso,
foreign
corporations.Proviso,
revocation
of certificate.

(355) SEC. 4. When such corporation has fully complied with the provisions of this act, the secretary of state may issue to such corporation a certificate of authority to carry on such business in this state during the period of its corporate existence, but not exceeding thirty years: Provided, That no such foreign corporation shall be permitted to transact business in this state, unless it be incorporated in whole or in part for the purpose or object for which a corporation may be formed under the laws of Michigan, and then only for such purpose or object. The secretary of state shall in the certificate which he issues state under what act such corporation is to carry on business in this state, and such corporation shall have all the powers, rights and privileges and be subject to all the restrictions, requirements and duties granted to or imposed upon corporations organized under such act; and the officers and directors of every such corporation shall be subject to all such requirements and duties as are imposed upon officers and directors of corporations organized under such act, and shall be subject to the same penalties and liabilities for failure to perform any duties imposed by such act as are the officers and directors of corporations organized under such act: Provided, That the carrying on in this state by such corporation of business for which it has not been so admitted or failure to fully comply with the requirements of the act under which it has been so admitted shall be sufficient cause for revoking the certificate of authority to do business in this state, and the secretary of state may revoke such certificate and shall promptly notify such corporation of such revocation and the reasons therefor by notice sent by mail to the home office of such corporation.

CHAPTER V.

ISSUE OF STOCKS, BONDS, ETC.

[Act 177 of 1911, amending Act 144 of 1909.]

Issuance of.

(402) SECTION 1. Any corporation or association, except municipal corporations, organized and existing, or which may hereafter be organized or authorized to do business under the laws of this state, or any lessee or trustee thereof, or any person or persons owning, conducting, managing, operating or controlling any plant or equipment within this state used wholly or in part in the business of transmitting messages

by telephone or telegraph, producing or furnishing heat, light, water or mechanical power to the public, directly or indirectly, and any railroad, interurban railroad or other common carrier may issue stocks, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of facilities or for the improvement or maintenance of service or for the discharge or lawful refunding of obligations: Provided, and not otherwise, That there shall have been secured from the Michigan railroad commission an order authorizing such issue and the amount thereof, and stating that in the opinion of the commission the use of the capital or property to be acquired to be secured by the issue of such stock, bonds, notes or other evidences of indebtedness, is reasonably required for the purposes of such person, corporation or association. Any such person, corporation or association desiring authority to issue stocks, bonds, notes or other evidences of indebtedness shall make written application therefor to the said commission in such form as the commission may require. After receiving such application, said commission may, for the purpose of enabling it to determine whether it should grant such authority, make such inquiry or investigation, hold such hearings and examine such witnesses, books, papers, documents or contracts as it may deem of importance in enabling it to reach a determination. If the applicant shall fail, neglect or refuse to furnish any or all of the information required by said commission, or if the said commission shall so direct, an appraisal of the property of said applicant shall be made by a disinterested person or persons to be appointed by said commission and whose compensation shall be fixed by said commission, the entire expense of making said appraisal to be borne by said applicant. After said appraisal is made and filed with said commission and before any action is taken by said commission upon said application, the expenses of said appraisal as determined by said commission shall be paid by said applicant to said commission, which shall deposit the same in the treasury of the state to be credited to the general fund, taking the receipt of the treasurer therefor and filing the same in its office with said application. If the applicant shall refuse or neglect to pay the expense of said appraisal, the commission shall dismiss such application and said commission may bring an action against said applicant in any court of competent jurisdiction in this state for the recovery of the expense of said appraisal. The expense of said appraisal shall be paid by the state treasurer upon the warrant of the auditor general to the persons certified by the commission to be entitled thereto. If from the application filed and such other information obtained from the investigation herein authorized, the said commission shall be satisfied that the funds derived from such issue of stocks, bonds or notes are to be applied to lawful pur-

Proviso,
permission.

Application.

Neglect
to furnish
information.

Appraisal, etc.

Action
for recovery.

Proviso.

Further
proviso, act
how applied.

poses and that such issue and amount is essential to the successful carrying out of such purposes, then said commission shall grant authority to make the issue applied for: Provided, That any such person, corporation or association may issue notes for lawful purposes, payable at periods of not more than twenty-four months, without authority from said commission; but no such notes shall in whole or in part, directly or indirectly, be refunded by any issue of stock or bonds or by any evidence of indebtedness running for more than twelve months without the consent of said commission: Provided further, That the provisions of this act shall apply to all stock, shares, bonds or notes issued to or taken by the incorporators or their agents, assigns or trustees of any such corporation or association in the first instance.

RIGHTS OF MINORITY STOCKHOLDERS IN ELECTION OF BOARD OF DIRECTORS.

An Act to secure the minority of stockholders in corporations organized under general laws, the power of electing a representative membership in boards of directors.

[Act 268 of 1911, amending Act 112 of 1885.]

The People of the State of Michigan enact:

Directors,
election of.

Term.

Proviso.

Further
proviso.

SECTION 1. In all elections for directors of any corporation organized under any general law of this state, other than municipal, insurance, banking corporations, building and loan associations, cooperative savings associations and summer resort associations, every stockholder shall have the right to vote in person or by proxy the number of shares of stock owned by him for as many persons as there may be directors to be elected, or to cumulate said shares and give one candidate as many votes as will equal the number of directors multiplied by the number of shares of his stock; or to distribute them on the same principle among as many candidates as he shall think fit. All such corporations shall elect their directors annually, and the entire number of directors shall be balloted for at one and the same time and not separately: Provided, That the by-laws of any such corporation shall not be so amended as to reduce the number of directors of such corporation in case the votes of a sufficient number of shares are recorded against such proposed amendment, which if cumulatively voted as herein provided would elect one or more directors, where the same number of shares if cumulatively voted would not be sufficient to elect the same number of directors of the reduced board: Provided further, That associations formed for social, yachting, hunting, boating, fishing

and rowing purposes, under act number twenty-two of the public acts of eighteen hundred eighty-three, approved April ten, eighteen hundred eighty-three, entitled "An act to authorize the formation of clubs for social purposes," the same being sections seven thousand seven hundred thirty-three to seven thousand seven hundred thirty-nine, both inclusive, of the compiled laws of eighteen hundred ninety-seven, or under section seven thousand six hundred sixty-seven of the compiled laws of eighteen hundred ninety-seven, may elect a portion of their directors for a longer term than one year as may be provided in their by-laws.

TEMPORARY HIGHWAYS.

[Act 153 of 1911, amending Act 283 of 1909.]

SEC. 7. Whenever any owner of any timbered land, not less than forty acres, shall wish to have a temporary highway laid out, he may in writing make application to the commissioner of highways of the proper township for that purpose, who shall proceed to lay out such temporary highway in all respects as provided by law in relation to laying out public highways, except as hereinafter provided.

Application
by timber
owner.

SEC. 8. When any such application shall be made the commissioner of highways of the township in which such road is to be located shall immediately certify the same to the township board of said township and the highway commissioner, and such township board shall at once proceed to view the premises described, and if the said highway commissioner and the township board shall determine that said highway is necessary for the purpose of removing the timber from such lands they shall certify the same under their hands and at the same time shall fix and determine the length of time that such highway shall be necessary and shall state such time in the record, and at the expiration of such time said highway shall cease: Provided, That no logging railroad shall be laid out or established in, upon or along any such temporary highways, except that during the ten years after the passage of this amendment permission may be given by the commissioner of highways to lay out and establish such logging railroad, but such railroads shall not be operated or maintained after ten years from the passage of this amendment.

Deter-
mination.

Proviso,
logging
railroad.

PROCEEDINGS AGAINST GARNISHEES.

[Act 54 of 1911, amending Act 137 of 1849.]

Corporations,
proceedings
against, as
garnishees.

Summons,
upon whom
may serve.

Judgment,
when
rendered.

Adjournment.

Appeal.

Proviso,
municipalities.

§ 1014. SEC. 25. All corporations of whatsoever nature, whether foreign, domestic, municipal or otherwise, except counties, may be proceeded against as garnishees in the same manner and with like effect as individuals under the provisions of this act, and the rules of law regulating proceedings against corporations, and the summons against the garnishee in such case may be served on the president, cashier, secretary, treasurer, comptroller or other principal officer of such corporation, and it shall be the duty of such officer so served or the proper officer of such corporation having knowledge of the facts, to appear before the justice at the return day of the summons and answer thereto, or to answer at his option in writing, verified by his oath before some person authorized to administer oaths, and transmit the same by mail or otherwise to the justice issuing said summons on or before the return day thereof, which shall be deemed a sufficient compliance with such summons; and unless he shall so appear or so answer, such corporation shall be held to be indebted to the defendant in the original suit to the amount of any judgment that may be made against such defendant in said original suit, unless within three days after the return day of such summons such corporation shall by such officer show a sufficient reason to the satisfaction of the justice for non-appearing to answer such summons, and the justice shall thereupon on the third secular day render judgment against such corporation as against other garnishees for the amount of such debt, and with like effect; but on such cause shown such officer may be examined as other garnishees and with like effect as against the corporation he represents. In cases where an adjournment is taken in the original suit for three or more days, and said corporation has failed to answer said garnishment summons, said garnishment case shall stand adjourned until the determination of the original suit, and if the plaintiff recover judgment therein and said corporation having failed to answer said garnishment summons, such corporation shall be held to be indebted to the plaintiff in the original suit to the amount of any judgment that may be made against such defendant in said original suit, and the justice shall thereupon render judgment against such corporation for the amount of such judgment in the original suit. Such corporation or the plaintiff in such suit may appeal from such judgment rendered under this section to the circuit court of the proper county, in the same manner as appeals may be taken from any other judgment of a justice of the peace, where the liability of such corporation may be fully inquired into: Provided, That when a municipal corporation is proceeded against, as provided for in this act, judgment shall

have been obtained in a court of competent jurisdiction by the plaintiff against the defendant before garnishment proceedings shall be valid against such municipal corporation: Provided further, That it shall be necessary for the plaintiff in the action to cause to be served a notice in writing upon the clerk, treasurer or comptroller of such municipal corporation, signed by the justice of the peace before whom an action of garnishment has been commenced, stating that judgment has been rendered and is on file in favor of the plaintiff and against the defendant; that the plaintiff has filed an affidavit to that effect, and that he believes or has good reason to believe that such municipal corporation is indebted to the defendant, and has money, property or effects in its hands belonging to such defendant, and that such municipal corporation shall hold such money, property or effects until the final disposition of the action of garnishment then pending before such justice, unless sooner released by the justice. Such corporation receiving the notice herein provided shall hold any money, property or effects in its hands belonging to the defendant named in such notice until the final disposition of the action against said municipal corporation, unless sooner released by order of the justice. Such money may be released by the defendant giving a bond in double the amount claimed to be due by the plaintiff in the action then pending, conditioned that if the plaintiff recover the bondsmen will pay into court for the use of said plaintiff the amount of such judgment and costs, such bond to be approved by the justice. The plaintiff in such original action against the defendant shall cause to be filed with the treasurer of such municipal corporation, at the time of service of the notice aforesaid, a certified copy of the judgment, whereupon such municipal corporation shall be liable to the judgment creditor for the amount of such judgment. The filing of such judgment shall constitute a lien upon any money, property or effects that such municipal corporation may have in its hands belonging to the defendant in such action, and such municipal corporation shall be required to make disclosure the same as in garnishee proceedings, and such further action shall be had under the law now provided for in garnishee proceedings, after the service of a summons, and any reference hereafter made relative to garnishees shall include and be construed to mean municipal corporations, after a filing of a certified copy of the judgment as hereinbefore provided: Provided, That when such corporation shall wish to appeal in cases where it has not answered as garnishees it shall, in addition to the other requirements of law, file with the justice a full and complete answer in writing as such garnishees, verified by the oath of one of the officers having knowledge of the facts, which said officer shall also answer under oath all questions put to him by such justice relating to the matter of such suit, and whereupon the said justice shall, within the time required for making such return of such appeal, at the option of the

Further
proviso,
notice.

Affidavit.

Money,
etc., who
to hold.

Bonds.

Judgment,
filing of.

To con-
stitute lien.

Proviso,
appeals.

Further
proviso,
upper
peninsula.

plaintiff, either make such return or set aside the judgment rendered against such corporation, by entry thereon upon his docket and across the face of such judgment, in which event said corporation, if it have not already paid all costs in such suit, shall be liable for the same: Provided further, That in the upper peninsula garnishee process under this act may be served on the clerks of all companies organized under this act, may be served on the clerks of all companies organized under the general mining laws of the state of Michigan, as well as on other officers thereof mentioned in this section.

CHAPTER VII.

POWERS OF BOARD OF TAX COMMISSIONERS.

[Act 17 of 1911, amending Act 281 of 1905.]

Secretary,
salary of.

(466) SEC. 146. Said board shall elect a secretary at a salary not to exceed two thousand dollars per annum, and a chief clerk at a salary not to exceed one thousand five hundred dollars per annum. The persons so elected shall hold their offices during the pleasure of said board. The secretary shall keep a record of all the proceedings of said board, and shall perform such other duties as may be assigned to him by the board. The secretary and chief clerk shall devote all their time to the duties of their offices.

Duties.

Sessions,
where held.

(468) SEC. 148. All regular sessions of said board shall be held at the office of said board at the capitol, to be furnished by the board of state auditors. Special meetings of said board for the purpose of ordering reviews of assessment rolls may be held at any place most convenient. The said board and the members thereof shall have access to all books, papers, documents, statements and accounts on file or of record in any of the departments of state, subject to the rules and regulations of the respective departments relative to the care of the public records. It shall have like access to all books, papers, documents, statements and accounts on file or of record in counties, townships and municipalities. Said board shall have the right to subpoena witnesses upon a subpoena signed by the president of the said board, and attested by the secretary thereof directed to such witnesses, and which subpoena may be served by any person authorized to serve subpoenas from courts of record in this state, and the attendance of witnesses may be compelled by attachment to be issued by any circuit court in the state upon proper showing that such witness has been properly subpoenaed and has refused to obey such subpoena. The person serving such subpoena shall receive the same compensation now allowed to

Books, etc.,
access to.

May sub-
poena wit-
nesses.

sheriffs and other officers for serving subpoenas. Said board shall have power to examine witnesses under oath, said oath to be administered by any member of said board or by the secretary thereof. Said board shall have the right to examine books, papers or accounts of any corporation, firm or individual owning property liable to assessment for taxes, general or specific, under the laws of this state, and any officer or stockholder of any such corporation, any member of any such firm, or any person or persons who shall refuse to permit said inspection, or neglect or fail to appear before said board in response to its subpoena, or testify as provided for in this section, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the state prison for a period not exceeding two years, or by both such fine and imprisonment in the discretion of the court.

Examination of witnesses, etc.

Penalty for refusal, etc.

(472) SEC. 152. After the various assessment rolls required to be made under this act or under the provisions of any municipal charter shall have been passed upon by the several boards of review, and prior to the making and delivery of the tax rolls to the proper officer for collection of taxes, the said several assessment rolls shall be subject to inspection by said board of state tax commissioners or by any member thereof; and in case it shall appear after investigation by said board, or be made to appear to said board by written complaint of any taxpayer, that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law, the said board may issue an order, directing the assessor whose assessment or failure to assess is complained against, to appear with his assessment roll and the sworn statements of the person or persons whose property or whose assessments are to be considered at a time and place to be stated in said order, said time to be not less than seven days from the date of the issuance of said order, and the place to be at the office of the board of supervisors at the county seat, or at such other place in said county in which said roll was made as said board shall deem most convenient for the hearing herein provided. A copy of said order shall be published in a newspaper published at the county seat of said county, if there be one, if not in some paper printed in said county, if there be any, at least five days before the time at which said assessor is required to appear; and where practicable personal notice by mail shall be given prior to said hearing to all persons whose assessments are to be considered. A copy of said order shall also be served upon the supervisor or assessing officer in whose possession said roll shall be at least three days before he is required to appear with said roll. The said board, or any member thereof, shall appear at the time and place mentioned in said order, and the supervisor or assessing officer upon whom said notice shall have been served

Assessment rolls, inspection of.

When assessor to appear before board.

Notice.

Hearing
and deter-
mination.

Property
not on roll.

Certificate
spread on roll.

Action final.

Clerical
assistance.

Com-
pensation.

Proviso,
expert as-
sistance.

Proviso.

shall appear also with said assessment roll. The said board or any member thereof, as the case may be, shall then and there hear and determine as to the proper assessment of all property and persons mentioned in said notice, and all persons affected or liable to be affected by review of said assessments thus provided for may appear and be heard at said hearing. In case said board, or the member thereof who shall act in said review, shall determine that the assessments so reviewed are not assessed according to law, he or they shall, in a column provided for that purpose, place opposite said property the true and lawful assessment of the same. As to the property not upon the assessment roll, the said board, or member thereof acting in said review, shall place the same upon said assessment roll by proper description and shall place thereafter, in the proper column, the true cash value of the same. Said board shall also spread upon said roll a certificate, signed by each member officiating at the review proceedings, showing the day and date on which said assessment roll was reviewed. For appearing with said roll as required herein the supervisor or assessing officer shall receive the same per diem as is received by him while in attendance at the meeting of the board of supervisors, to be presented to and paid by the proper officers of the municipality of which he is the assessing officer in the manner as his other compensation is paid. The action of said board or member done as provided in this act shall be final. When any property has been reviewed, assessed and valued by said board as herein authorized, such property shall not be assessed or valued at a lower figure within a period of three years, where the property remains substantially the same, without the written consent of said board.

(473) SEC. 153. In addition to the secretary and chief clerk said board may employ such other clerical assistance as may be necessary and required to perform the duties imposed upon it by this act. The average compensation paid for such clerical assistance shall not exceed one thousand dollars per annum for each clerk employed: Provided, That said board may employ such expert assistance as may from time to time be necessary and essential to a proper exercise of the powers and performance of the duties prescribed in this act. The compensation for such expert assistance shall be fixed by said board at such amount as shall be approved by the board of state auditors: Provided, That the compensation herein authorized and all other necessary expenses incurred in carrying out the provisions of this act shall be allowed by the board of state auditors, upon proper vouchers approved by the president and secretary of the board and paid by the state treasurer out of the general fund.

TAXATION OF SHARES OF STOCK.

An Act to provide for the taxation in the hands of their holders or owners or the persons or corporations, to whom owing, of the shares of stock in and indebtedness of certain railroad or railway corporations, whether the same be represented by bonds, other securities, interest coupons or otherwise; to require the making of reports by such railroad or railway corporations upon which to base such taxes; to fix the penalties for any refusal or neglect to make such reports, and to provide in certain instances for the inspection of the corporate books of any such railroad or railway corporation for the purpose of securing information upon which to base such taxation; to make the said tax a lien upon the property taxed and in certain instances upon the property of the said railroad or railway corporation issuing or owing the same, and to provide for the enforcement of the said lien and tax.

[P. A. 95 of 1911.]

The People of the State of Michigan enact:

SECTION 1. For the year nineteen hundred twelve, and for each year thereafter, a specific state tax shall be levied upon all of the shares of stock issued and outstanding of, and upon the indebtedness whether represented by bonds or other securities issued, or by unpaid interest coupons or otherwise, secured by a mortgage or trust deed or otherwise upon the railroad or property or any part thereof, or being a permanent indebtedness, owing by, all railroad or railway companies now or hereafter existing or doing business in Michigan under, or possessing or exercising any special charter or any rights, privileges or franchises under, any special charter which said tax shall be upon the interest or property therein of the holder or owner thereof, or the person or corporation to whom the same shall be owing and the said tax shall be as follows: The shares of stock shall be subject to an annual tax at the rate of two per cent upon the par value thereof, and the indebtedness, whether represented by bonds, past due interest coupons or otherwise, shall be subject to an annual tax at the rate of one per cent upon the face value or amount thereof.

Railroads,
stock, etc.,
of, specific
tax upon.

Rate of
taxation.

SEC. 2. Every such railroad or railway corporation shall, on or before the first day of May in each year, make and file with the auditor general a report, which shall set forth in detail the number of shares of its capital stock issued, the aggregate amount thereof, the names of the individual holders or owners, with the amount thereof held by each, together with the residence or place of business of each; the amount of its bonded indebtedness, together with the names of the persons or corporations holding or owning the same, and the amount thereof held or owned by each, with their residences or places of business; the amount of its other indebtedness secured by mortgage or otherwise upon its road or property, the names of the persons or corporations to whom owing, the

Annual
report,
what to show.

Stock,
etc., held
by trustee.

Failure
to report,
penalty.

Tax, com-
puting of.

When
payable.

Dividends,
etc., tax de-
ducted from.

amount thereof owing or belonging to or held by each with their residences or places of business; the amount of all other permanent indebtedness, together with the names of the persons or corporations to whom owing, the amount owing or belonging to or held by each with their residences or places of business. In any case where the said stock, bonds, securities or other indebtedness are held by a trustee or trustees, or by any other person or corporation for the owners thereof, and the said railroad or railway company shall not have the name or names and residences or places of business of the individual owner or owners thereof, it shall report the names and residences or places of business of said trustee or trustees or any other person holding the same for the owners thereof for any purpose, as the holders thereof, and in such case the auditor general may upon computation of the tax, assess it against such trustee or trustees. Such report shall be verified by the secretary and treasurer of the corporation. If any such corporation shall fail, neglect or refuse to make the said report within the time limited, it shall be subjected to the forfeiture of all its special rights and privileges in addition to a penalty of one hundred dollars per day during the period of such refusal or neglect, to be recovered in any court of competent jurisdiction in an action in the name of the people, and the right to bring repeated actions for the recovery of penalties is hereby given.

SEC. 3. Upon the coming in of said reports and within thirty days thereafter, the auditor general shall compute at the rates herein fixed the taxes upon such stock, bonds, securities or indebtedness as the case may be, and shall enter the same upon his ledger as a charge and assessment against each of the several holders or owners of such stock, bonds, securities or indebtedness, and shall thereupon notify each of said corporations of the amount thus assessed and charged on account of the stock in, or bonds, securities or indebtedness issued or owing by such corporation, together with a detailed statement of the names of the persons or corporations against whose stock, bonds, security or credit, the said assessment and charges are made; he shall also forthwith notify each of such holders or owners of any such stock, bonds, securities or indebtedness of the amount assessed against him or it, by registered mail.

SEC. 4. Said tax shall be payable to the state treasurer on or before the thirtieth day of June in the year in which assessed, and if not paid shall bear interest from the fifteenth day of July in the year in which payable at the rate of two per cent per month.

SEC. 5. It shall be the duty of every such corporation to deduct the amount of said tax from any dividend or interest or principal which shall be by it payable or about to be paid, to the holders or owners of any such shares, bonds, securities or indebtedness, and in the event of its refusal or neglect to do so, the said corporation shall be liable for the amount

thereof and all penalties for non-payment; and the amount thereof shall, in the event of such refusal or neglect from the first day of May in the year in which assessed, be a lien upon all of its road and property, taking precedence of the lien upon or interest in the railroad or other property on account of which the tax was levied, and of all claims or rights in or to said railroad property arising subsequent to the time said tax becomes a lien.

Lien upon
road, etc.

SEC. 6. The said tax and interest thereon, shall from the first day of May in each year be a lien upon the shares, bonds, securities or indebtedness on account of which the same is assessed and charged, and shall take precedence of all liens thereupon or claims thereto and assignments or transfers thereof, and the tax may be recovered either through a proceeding to enforce such lien or by an action at law.

Tax and
interest,
when to be-
come a lien.

SEC. 7. In case any such railroad or railway corporation shall refuse or neglect to make such report within the time limited, the auditor general shall nevertheless make such computation of the tax against the holders or owners of such bonds, securities or indebtedness, if he can procure data therefor satisfactory to himself. If he be unable to otherwise procure sufficient data therefor, he may cause an examination to be made of the books and records of such corporation for the purpose of procuring the necessary information, and shall be entitled to the possession of the same for a reasonable time for such purpose; and all corporations now or hereafter subject to the provisions of this act shall be required to keep or to produce their corporate books in this state for the purpose of such inspection; the penalty of a refusal thereof to result ipso facto in a forfeiture of any special charter and all rights, privileges and franchises thereunder; in case the auditor general be unable to procure such information as is required herein as is satisfactory to himself for the purpose of fixing said tax and the persons against whom the same shall be charged and the said corporation refuses to furnish the same or to permit access to its books for that purpose, or in case the books upon inspection fail to furnish the information, then he shall upon the best information obtainable enter taxes against the shares, bonds, securities and indebtedness as a whole, and charge the same to the said railroad or railway corporation whose duty it shall be to reserve the amount thereof from the dividend or interest or principal payable or about to be paid to the holders or owners thereof, directly or through trustees or representatives, and to pay the same within the time herein limited to the said treasurer, and in such cases in addition to the lien against the shares, bonds, securities and indebtedness themselves, a lien for such tax and for all interest thereon shall exist upon the entire road and property of the said railroad or railway corporation, and the said lien and tax and interest thereon may be enforced against the said railroad or railway corporation, or against any person or corporation liable for the same, either

Report,
refusal to
make.

May examine
books, etc.

Informa-
tion, when
unable to
secure.

Lien, en-
forcement of.

by foreclosure of the said lien or by an action at law, or through any method or procedure heretofore at any time in force in Michigan for the collection of specific taxes.

Validity
of act.

SEC. 8. It is the purpose that this act shall be valid as far as possible and the invalidity of any provision shall not render invalid other provisions.

Tax, pay-
ment of,
under protest.

SEC. 9. Any person or corporation against whom any tax under this act is assessed or who or which may be required to pay the same, may pay the same to the state treasurer under protest, giving notice at the time of payment of the reasons for such protest; and the party making such payment may at any time within thirty days thereafter sue the said state treasurer for the recovery thereof in any court of competent jurisdiction, and if it determines that the same was wrongfully collected as not being due to the state for any reason going to the merits of the same, then the court trying the case may certify of record that the same was wrongfully paid and ought to be refunded, whereupon the auditor general shall issue his warrant for the same which shall be paid in preference to other claims upon the treasury. The right of appeal shall exist to both parties as in other actions. There shall be no other remedy in any case of the collection of the tax under this act than that above provided, and no writ for the prevention of the collection of any revenue claimed hereunder or to hinder or delay collection of the same shall in any wise issue, but in all cases in which for any reason it shall be claimed that the tax was collected or about to be collected, was or is wrongfully or illegally collected or about to be collected, the remedy shall be as above provided, and in no other manner.

Appeal.

Defend-
ants in
case of suit.

SEC. 10. In case of suit on the part of the state or its officers to enforce collection of such tax against the holders or owners of any such shares, bonds, securities or indebtedness, it shall be permissible to join as defendants in a single case all persons or corporations owning or holding the stocks, bonds, securities or indebtedness of a single corporation, and in case such persons or corporations are non-residents of the state, service upon them may be had by serving any process upon the corporation issuing the bonds, stocks or securities or owing the indebtedness. In addition it shall be permissible to make service upon any such non-residents by publication in the manner provided by law.

When tax
not invalid.

SEC. 11. No tax levied under this act shall be declared invalid or set aside because of any irregularity or mistake in the name of the person or corporation against whom the assessment is made. In the event of a judgment in an action at law or equity for the amount of the tax, the same may be enforced, either against the property on account of which the tax is levied, or against any other property within the state belonging to the persons or corporations subject to such tax.

Judgment,
enforcement
of.

SEC. 12. As a cumulative and additional method of procedure in the assessment of such tax, in those cases where any corporation required to report neglects or refuses to make such report, the auditor general may at his option proceed in the making of such assessment and giving notice thereof, and the persons or corporations taxed may proceed in contesting the assessment, in the manner provided in sections four thousand thirty to four thousand thirty-four inclusive, of the compiled laws of eighteen hundred ninety-seven.

Assessment,
contesting of.

SEC. 13. In case any railroad or railway corporation whose shares, securities, bonds or indebtedness are subject to taxation under this act, shall not, under its method of apportioning earnings on through or joint business, produce sufficient net earnings to pay dividends or the interest upon its indebtedness, from which such tax may be collected, or if such corporation shall not declare a dividend or pay interest from funds available therefor, and such tax shall not be paid, then the attorney general may institute proceedings against such corporation for the recovery of the taxes assessed on account of its shares, bonds, securities or indebtedness; and if in any such proceedings the court shall determine that any proprietary or connecting line has been allowed or paid a greater proportion of the earnings than should have been allowed or paid, as its reasonable and equitable proportion of through or joint earnings, or if the said court shall determine that said corporation earned or possesses funds which are applicable to the payment of dividends or interest or principal, then in either such case such corporation shall be liable to the state in the first instance for the amount of such tax, but only to the amount of earnings paid by it to any such connecting or proprietary line or railroad in excess of the fair and reasonable amount that in the judgment of the court should have been paid, or to the amount of undistributed surplus applicable to the payment of dividends, interest or principal, and any amount collected from such corporation under this section may be by such corporation charged against the persons or corporations on account of whose tax the collection was made.

Insufficient
earnings.

Recovery
of tax.

SEC. 14. Any corporation or officer thereof which or who shall in reporting pursuant to this act make a false report, shall be deemed guilty of perjury and subject to penalty therefor as provided by general law.

Perjury,
what deemed.

TAXATION OF STEAM VESSELS.

An Act regulating the taxation of steam vessels, steam boats and other steam water craft of registered tonnage within the state of Michigan.

[P. A. 70 of 1911.]

The People of the State of Michigan enact:

Steam
vessels, etc.,
tonnage tax.

SECTION 1. In consideration of an annual payment into the state treasury by the owner of any steam vessel, steam barge or steam boat engaged in the carrying of passengers, holding license for such purpose, or carrying passengers and freight, owned within this state or hailing from any port thereof, and employed in the navigation of international waters or waters of the Great Lakes, of a sum equal to twenty cents per net ton on the registered tonnage thereof, and the annual payment into the state treasury by the owner of any steam vessel, steam barge or steam boat engaged in the carrying of freight only, owned within this state or hailing from any port thereof and employed in the navigation of international waters, of a sum equal to ten cents per net ton on the registered tonnage thereof, such payment shall be received in lieu of all taxes, and such steam vessel, steam barge or steam boat shall be and the same is hereby made exempt from all further taxation, either state, county or municipal, upon the payment of the sums herein provided.

Verified
statement,
what to con-
tain.

SEC. 2. The owner of any steam vessel, steam barge or steam boat hailing from any port of this state and employed in the navigation of international waters or waters of the Great Lakes, to comply with the terms of this act, shall annually, on or before the first day of December, file with the auditor general a verified statement in writing containing the name, port of hail, tonnage and name of owner of such steam vessel, steam barge or steam boat, and shall thereupon pay into the state treasury a sum equal to ten cents for freighter or twenty cents for passenger boat per net ton on the registered tonnage of said vessel, and the said treasurer shall thereupon issue his receipt therefor.

Money,
where paid.

SEC. 3. The said state treasurer shall annually, on or before the first day of December, pay into the county treasury of any county wherein is located the port of hail of any steam vessel, steam barge or steam boat complying with this act, all money so received from any steam vessel, steam barge or steam boat whose port of hail is within said county. The county treasurer of said county shall then pay to the city or township wherein is located the port of hail of said steam vessel, steam barge or steam boat such proportion of said money or tax as the amount of state and county tax paid by said city or township bears to the whole state and county tax in said county, as fixed and determined by the board of su-

pervisors of said county at the annual meeting of said supervisors at which said board equalizes and apportions the amount of taxes that shall be paid by such city or township for state and county purposes, and the balance shall be retained by said county treasurer for state and county purposes, in proportion to the amounts said state and county are each entitled to under such apportionment by said board of supervisors.

CHAPTER VIII.

DEFINING BILLS OF LADING.

[Act 234 of 1911, amending Act 271 of 1909.]

(526) SEC. 2. Whenever a bill of lading is issued by a carrier for the transportation of property from one place to another within this state, or between places one of which is within this state, in which the property described therein is stated to be consigned or deliverable to a specified person, without any statement or representation that such property is consigned or deliverable to the order of any person, such bill shall be known as a "straight bill of lading" and shall contain the following requirements:

"Straight
bill of lading"
defined.

(a) The bill shall be printed on white paper eight and one-half inches wide;

What
to contain.

(b) The bill shall have prominently stamped upon its face the words "not negotiable;"

(c) Nothing herein shall be construed to prohibit the insertion in a straight bill of lading of other terms or conditions not inconsistent with the provisions of this act, but it shall be unlawful to insert in such bill any terms or conditions contrary to or inconsistent with such provisions.

Nothing herein contained shall be construed to prohibit express companies from using the customary receipts employed by them in the ordinary transaction of their business.

Express
companies.

UNIFORM BILL OF LADING.

An Act to provide for uniform bills of lading, to fix the punishment for violations of this act, and to repeal all acts or parts of acts inconsistent herewith.

[P. A. 165 of 1911.]

The People of the State of Michigan enact:

Act to govern.	SECTION 1. Bills of lading issued by any common carrier shall be governed by this act.
	SEC. 2. Every bill must embody within its written or printed terms:
Date.	(a) The date of its issue;
Name.	(b) The name of the person from whom the goods have been received;
	(c) The place where the goods have been received;
Destination.	(d) The place to which the goods are to be transported;
To whom sent.	(e) A statement whether the goods received will be delivered to a specified person, or to the order of a specified person;
Description.	(f) A description of the goods or of the packages containing them which may, however, be in such general terms as are referred to in section twenty-three, and
	(g) The signature of the carrier.
Liability of carrier.	A negotiable bill shall have the words "order of" printed thereon immediately before the name of the person upon whose order the goods received are deliverable. A carrier shall be liable to any person injured thereby for the damage caused by the omission from a negotiable bill of any of the provisions required in this section.
Conditions of bill.	SEC. 3. A carrier may insert in a bill issued by him any other terms and conditions, provided that such terms and conditions shall not:
	(a) Be contrary to law or public policy; or
Care in transportation.	(b) In any wise impair his obligation to exercise at least that degree of care in the transportation and safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.
Non-negotiable bill.	SEC. 4. A bill in which it is stated that the goods are consigned or destined to a specified person, is a non-negotiable or straight bill.
Negotiable bill.	SEC. 5. A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill, is a negotiable or order bill. Any provision in such a bill that it is non-negotiable shall not affect its negotiability within the meaning of this act.
Not to be issued in sets.	SEC. 6. Negotiable bills issued in this state for the transportation of goods to any place in the United States on the continent of North America, except Alaska, shall not be issued in parts or sets. If so issued the carrier issuing them

shall be liable for failure to deliver the goods described therein to any one who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts.

SEC. 7. When more than one negotiable bill is issued in this state for the same goods to be transported to any place in the United States on the continent of North America, except Alaska, the word "duplicate" or some other word or words indicating that the document is not an original bill shall be placed plainly upon the face of every such bill, except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to any one who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill.

Duplicate bills.

Liable for damages.

SEC. 8. A non-negotiable bill shall have placed plainly upon its face by the carrier issuing it "non-negotiable" or "not negotiable." This section shall not apply, however, to memoranda or acknowledgments of an informal character.

Facing of bill.

SEC. 9. The insertion in a negotiable bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any rights or equities of such person in the goods.

Name of person to be notified.

SEC. 10. Except as otherwise provided in this act, where a consignor receives a bill and makes no objection to its terms or conditions at the time he receives it, neither the consignor nor any person who accepts delivery of the goods, nor any person who seeks to enforce any provision of the bill, shall be allowed to deny that he is bound by such terms and conditions, so far as they are not contrary to law or public policy.

Consignor bound by terms, etc.

SEC. 11. A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods, or if the bill is negotiable, by the holder thereof, if such demand is accompanied by:

Carrier bound to deliver goods, etc.

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods;

(b) An offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is negotiable; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure.

Failure to deliver.

SEC. 12. A carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is

Delivery of goods.

(a) A person lawfully entitled to the possession of the goods; or

(b) The consignee named in a non-negotiable bill for the goods; or

(c) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been indorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consignee.

Liability
of carrier.

SEC. 13. Where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to any one having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he:

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery; or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

Request or
information.

A request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods.

Delivery
on negoti-
able bill.

SEC. 14. Except as provided in section twenty-seven, and except when compelled by legal process, if a carrier delivers goods for which a negotiable bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to any one who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled thereto.

Delivery
in part.

SEC. 15. Except as provided in section twenty-seven, and except when compelled by legal process, if a carrier delivers part of the goods for which a negotiable bill had been issued and fails either:

(a) To take up and cancel the bill; or

(b) To place plainly upon it a statement that a portion of the goods has been delivered, with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill, to any one who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of

any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto.

SEC. 16. Any alteration, addition or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted on the bill shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor. Alterations, etc.

SEC. 17. Where a negotiable bill has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees. The delivery of the goods under an order of the court as provided in this section, shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. When negotiable bill lost. Costs, etc.

SEC. 18. A bill upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability. Duplicate bill, liability.

SEC. 19. No title to goods or right to their possession, asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien. Title, etc., asserted by carrier.

SEC. 20. If more than one person claims the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate. Claimants to interplead.

SEC. 21. If some one other than the consignee or person in possession of the bill, has a claim to the title or possession of the goods, and the carrier has information of such claim the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. Carrier excused from liability.

SEC. 22. Except as provided in the two preceding sections and in section twelve, no right or title of a third person unless enforced by legal process shall be a defense to an action brought by the consignee of a non-negotiable bill or by the Title of third person.

holder of a negotiable bill against the carrier for failure to deliver the goods on demand.

Liability
to consignee.

SEC. 23. If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to

(a) The consignee named in a non-negotiable bill; or

(b) The holder of a negotiable bill,

Goods,
description of.

Who has given value in good faith relying upon the description therein of the goods, for damages caused by the non-receipt by the carrier or a connecting carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue. If, however, the goods are described in a bill merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may, also, by inserting in the bill the words "shipper's load and count" or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the non-receipt or by the misdescription of the goods described in the bill.

Shipper's
load and
count.

Attach-
ment, etc.

SEC. 24. If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner and a negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court.

Injunction,
attach-
ment, etc.

SEC. 25. A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which can not readily be attached or levied upon by ordinary legal process.

Lien on goods.

SEC. 26. If a negotiable bill is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage and terminal

charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier.

SEC. 27. After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be negotiable. Satisfaction of lien, etc.

SEC. 28. A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank. Negotiation by delivery.

SEC. 29. A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner. By indorsement.

SEC. 30. A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby. Transfer.

A non-negotiable bill can not be negotiated, and the indorsement of such a bill gives the transferee no additional right.

SEC. 31. A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery. Person in possession.

SEC. 32. A person to whom a negotiable bill has been duly negotiated acquires thereby: Title to goods.

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value; and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him. Obligation of carrier.

SEC. 33. A person to whom a bill has been transferred but not negotiated acquires thereby as against the transferor, the title to the goods, subject to the terms of any agreement with Title to transferred goods.

Notification
of carrier.

the transferor. If the bill is non-negotiable, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification. Prior to the notification of the carrier by the transferor or transferee of a non-negotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor. A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time with the exercise of reasonable diligence to communicate with the agent or agents having actual possession or control of the goods.

Right of
transferee.

SEC. 34. Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

Transfer by
indorsement
or delivery.

SEC. 35. A person who negotiates or transfers for value a bill by indorsement or delivery, including one who assigns for value a claim secured by a bill, unless a contrary intention appears, warrants:

- (a) That the bill is genuine;
- (b) That he has a legal right to transfer it;
- (c) That he has knowledge of no fact which would impair the validity or worth of the bill, and
- (d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

In the case of an assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim.

Indorsement.

SEC. 36. The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations.

Genuine-
ness not
warranted.

SEC. 37. A mortgagee or pledgee, or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or to war-

rant the genuineness of such bill or the quantity or quality of the goods therein described.

SEC. 38. The validity of the negotiation of a bill is not im-
paired by the fact that such negotiation was a breach of duty Negotiation,
validity of.
on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor, in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress or conversion.

SEC. 39. Where a person having sold, mortgaged or pledged goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation. Mortgaged or
pledged goods.

SEC. 40. Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows: Transfer
or retention,
how indicated.

(a) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the property in the goods to the buyer;

(b) Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract;

(c) Where by the bill the goods are deliverable to the order of the buyer or of his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer;

(d) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer, or to the order of the buyer, or is indorsed in blank or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill or goods from

the buyer, shall obtain the title to the goods, although the draft has not been honored, if such purchaser has received delivery of the bill indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

Where
seller draws
on buyer and
transmits
draft and
bill of lading.

SEC. 41. Where the seller of goods draws on the buyer for the price of the goods and transmits the draft and a bill of lading for the goods either directly to the buyer or through a bank or other agency, unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming:

(a) If the draft is by its terms or legal effect payable on demand or presentation or at sight, or not more than three days thereafter (whether such three days be termed days of grace or not), that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill;

(b) If the draft is by its terms payable on time, extending beyond three days after demand, presentation or sight (whether such three days be termed days of grace or not), that the seller intended to require acceptance, but not payment of the draft before the buyer should be entitled to receive or retain the bill.

The provisions of this section are applicable whether by the terms of the bill the goods are consigned to the seller, or to his order, or to the buyer, or to his order, or to a third person or to his order.

Seller's
lien not to
defeat rights
of purchaser.

SEC. 42. Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation.

Rights,
etc., of
mortgagee or
lien holder.

SEC. 43. Except as provided in section forty-two nothing in this act shall limit the rights and remedies of a mortgagee or lienholder whose mortgage or lien on goods would be valid, apart from this act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them.

Bill,
unlawful
issue of.

SEC. 44. Any officer, agent or servant of a carrier, who with intent to defraud issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received by such carrier, or by an agent of such carrier or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

SEC. 45. Any officer, agent or servant of a carrier, who with intent to defraud issues or aids in issuing a bill for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. False statements.

SEC. 46. Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of the provisions of section seven, knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. Duplicate or additional bills.

SEC. 47. Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding five hundred dollars, or by both. Want of title by shipper.

SEC. 48. Any person who with intent to deceive negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such carrier, or of a connecting carrier, without disclosing this fact, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. Certain negotiation unlawful.

SEC. 49. Any person who with intent to defraud secures the issue by a carrier of a bill, knowing that at the time of such issue any or all of the goods described in such bill as received for transportation have not been received by such carrier, or an agent of such carrier or a connecting carrier, or are not under the carrier's control, by inducing an officer, agent or servant of such carrier falsely to believe that such goods have been received by such carrier, or are under its control, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. Securing bill by misrepresentation.

SEC. 50. Any person who with intent to defraud issues or aids in issuing a non-negotiable bill without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. Non-negotiable bills.

Rules of law
and equity
governing.

SEC. 51. In any case not provided for in this act, the rules of law and equity including the law merchant, and in particular the rules relating to the law of principle [principal] and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, accident, mistake, bankruptcy, or other invalidating cause, shall govern.

Act, how
construed.

SEC. 52. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Terms defined.

SEC. 53. (1) In this act, unless the context or subject matter otherwise requires:

“Action” includes counter-claim, set-off, and suit in equity.

“Bill” means bill of lading.

“Consignee” means the person named in the bill as the person to whom delivery of the goods is to be made.

“Consignor” means the person named in the bill as the person from whom the goods have been received for shipment.

“Goods” means merchandise or chattels in course of transportation, or which have been or are about to be transported.

“Holder” of a bill means a person who has both actual possession of such bill and a right of property therein.

“Order” means an order by indorsement on the bill.

“Owner” does not include mortgagee or pledgee.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee and to take as pledgee.

“Purchaser” includes mortgagee and pledgee.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a bill is taken either in satisfaction thereof or as security therefor.

(2) A thing is done “in good faith,” within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

Application
of act.

SEC. 54. The provisions of this act do not apply to bills made and delivered prior to the taking effect thereof. Nothing herein contained shall be construed to prohibit express companies from using the customary receipts employed by them in the ordinary transaction of their business.

Sec. 55 repeals all acts or parts of acts inconsistent with this act.

SEC. 56. This act may be cited as the Uniform Bills of Lading Act.

FALSE BILLING, WEIGHING, ETC., OF GOODS.

An Act to prohibit the false billing, false classification and false weighing of any goods, property or effects offered to any common carrier in this state for the purpose of transportation, and to provide a penalty for the violation hereof.

[P. A. 253 of 1911.]

The People of the State of Michigan enact:

SECTION 1. Every person, firm or corporation offering goods, property or effects to any common carrier within this state for the purpose of transportation shall furnish to such carrier a true description of the goods, property or effects so offered. Description of goods.

SEC. 2. Any person, firm or corporation who shall knowingly offer any goods, property or effects to any common carrier for transportation within this state with a false description of the same, or who shall offer any such goods, property or effects under a false billing, false classification or false weight and thereby procure or attempt to procure the transportation of any such goods, property or effects at a less cost than would be due under a true description, true billing, true classification or true weight, shall be deemed guilty of a misdemeanor, and upon conviction thereof by any court of competent jurisdiction shall be punished by a fine of not to exceed two hundred dollars or by imprisonment in the county jail for a term not to exceed ninety days, or by both such fine and imprisonment in the discretion of the court. False description.
Penalty.

TRANSPORTATION OF GAME AND BIRDS.

[Extract from P. A. 275 of 1911.]

An Act to provide for the protection of game and birds, to regulate the taking, possession, use and transportation of the same, to prohibit the sale thereof, to regulate the manner of hunting, pursuing and killing game or birds, to provide a penalty for the violation of any of the provisions of this act, and to repeal inconsistent acts and parts of acts.

The People of the State of Michigan enact:

SECTION 1. All wild animals and wild birds, both resident and migratory (native and introduced), found in this state, are hereby declared to be the property of the state. Property of state.

SEC. 2. No person shall at any time of the year or in any manner, take, pursue, wound or kill any wild animal or wild Unlawful to kill.

bird mentioned in this act, or any introduced game animals or birds, or transport, sell, offer or expose for sale, or have the same in possession, except as expressly permitted by this act.

Unlawful to ship.

SEC. 4. No person, company or corporation shall have in possession or under control any of the birds or animals protected by the laws of this state, with intent to ship or carry the same beyond the limits of this state, nor shall ship or carry, or intentionally allow or aid in such shipment or carrying out of this state, any such birds or animals, except as expressly provided by law.

Permits for certain purposes.

SEC. 7. The state game, fish and forestry warden may in his discretion issue permits under the seal of his department to the owner, trustee or custodian of any animal or bird lawfully held in captivity to transport the same out of the state in exchange for animals or birds of other species desired for propagation or exhibition. The owner of any game animals or game birds bred and reared in captivity, may sell and transport the same at any season of the year under such regulations, prescribed by the state game, fish and forestry warden as will effectually protect the wild game of the state. The state game, fish and forestry warden, is given authority to issue permits for such sale and transportation, upon the payment of a fee of one dollar, to be credited to the game protection fund.

Game preserves.

SEC. 8. The state game, fish and forestry warden, may in his discretion, on application, and the payment of ten dollars, issue to individuals owning lands in this state, or bona fide members of clubs who own and maintain game preserves in this state, permits good for the yearly game season to carry as open hand baggage during the season twenty wild ducks or other migratory birds lawfully killed by him or them, on his or their own premises or the premises of the club of which he or they are members, to his or their respective homes out of the state. Any violation of the privileges herein given shall at once work a forfeiture of the permit granted and subject such person to the penalties provided by this act.

Permits for scientific purposes.

SEC. 9. The state game, fish and forestry warden may issue permits to any duly accredited agents of the United States department of agriculture, to capture, kill or ship and carry out of the state at any time of the year a limited number of specimens of the birds and animals of the state, to be used for scientific purposes.

Possession, when unlawful.

SEC. 10. No person, company or corporation, shall have in possession the dead body or carcass or skin or any portion thereof, of any animal or bird mentioned or referred to in this act during the time when the killing of such animal or bird is unlawful, except as authorized by law, and excepting specimens, heads or pelts prepared or mounted for scientific or educational purposes: Provided, however, That any person may have in his possession for thirty days after the closing of the season any game or birds lawfully killed by him

Proviso.

during the open season: Provided further, That no person, corporation or transportation company shall receive for transportation or have in possession at the initial billing station, the carcass or dead body of any animal or bird mentioned or referred to in this act, after forty-eight hours immediately following the closing of the time when the killing of said animal or bird is authorized by law: Provided, further, That any person engaged in rearing any of the game animals or game birds protected by law within an enclosure, may kill for his use and consumption at any time any of the said animals or birds, and may sell and transport alive any of the said animals or birds, and may sell and transport without the state any of said animals or birds when accompanied by a permit from the state game, fish and forestry warden; and it shall be the duty of the said state game, fish and forestry warden to issue permits on application, when satisfied that such animals or birds were so reared within an enclosure.

Further proviso, transportation.

Further proviso.

SEC. 11. The state game, fish and forestry warden is hereby given authority to issue permits for the sale and transportation, either within or without the state, of deer skins at any season of the year, when satisfied that the animals from which such skins were taken were killed at a lawful time and in a lawful manner; each hide so transported or sold, shall have attached to it the original license tag while being so transported or sold, unless otherwise authorized by the state game, fish and forestry warden. No game birds shall be shipped by express, freight or baggage or in any other manner, but shall be carried as hand baggage only: Provided, however, That nothing in this section shall apply to the interstate carrying, as open hand baggage, of wild ducks or other migratory birds, as provided for in section eight of this act.

Authority to issue permits.

Proviso.

SEC. 19. Any non-resident hunter, who by the laws of this state is required to procure a non-resident hunter's license, and who does procure same, may take from this state as hand baggage a number of any or each or all of said game birds equal to the number of said birds permitted to be killed by him under said license in a single day, excepting as hereinafter provided.

Non-resident hunters.

MISCELLANEOUS.

QUALIFICATIONS OF TELEGRAPH OPERATORS, RAILROAD CONDUCTORS, ENGINEERS AND FLAGMEN.

An Act to prescribe the qualifications of telegraph operators, railroad conductors, engineers and flagmen employed on the railroads of this state, and to provide penalties for the violation hereof.

[P. A. 187 of 1911.]

The People of the State of Michigan enact:

Affidavit as to experience, etc.

SECTION 1. Every person hereafter employed upon any steam railroad in this state in the capacity of locomotive engineer, conductor or flagman shall file in the office of the Michigan railroad commission an affidavit, in such form as the commission may prescribe, setting forth the length of railroad experience of the person making the same, and for what company or companies and in what capacity performed.

Engineers, prior experience.

SEC. 2. No person shall run or operate any locomotive or other motor power upon any railroad in the state of Michigan without first having served three years as fireman prior to qualifying for freight service and two years as a freight engineer before qualifying for passenger service.

Conductors, who may act.

SEC. 3. No person shall act or engage to act as a conductor on a railroad freight train in this state without having for two years prior thereto served or worked in the capacity of a brakeman or conductor on a freight or passenger train on a line of road; nor shall any person act or engage to act as a conductor on a passenger train in this state without having for one year prior thereto served or worked in the capacity of a conductor of a freight or passenger train on a line of road.

Telegraph operators.

SEC. 4. It shall be unlawful for any common carrier by railroad, carrying freight or passengers between points in this state, to employ any telegraph operator who has not had at least thirty days' experience in the handling of train orders under the tutorship of an experienced telegraph operator and shall have attained the age of nineteen years.

Flagmen.

SEC. 5. No person shall act or engage to act as a flagman on a railroad train in this state without having for three months prior thereto served or worked as a brakeman on a freight train or passenger train on a line of road.

SEC. 6. No railroad company by its officers, agents or employes shall knowingly engage or employ any person to act in the capacity of locomotive engineer, conductor or flagman in violation of the provisions of this act.

Exceptions.

SEC. 7. Nothing in this act shall be construed as applying to the running or operating of engines in taking said engines

to or from trains at division terminals by engine hostlers, or of the shifting of cars or making up trains or doing any work appurtenant thereto, or engine houses, trams or freight yards by switchmen or yardmen, or in the case of the disability of an engineer or a conductor or a flagman while out on the road between division terminals, or in case of relief or wrecking trains, in case of accident or wreck.

SEC. 8. The provisions of this act shall not apply to any railroad company within this state nor the receiver or lessee thereof, whose line of railway is less than thirty miles in length, nor shall anything herein contained relieve any railroad company from the negligence of any of its employees. In case any railroad company is unable to hire a sufficient number of men having the experience for the respective positions specified in this act, at the average rate of wages paid by said company during the next preceding year, it shall be deemed a substantial compliance with this act if such company shall employ from among such men as are available those having the highest qualifications as to experience and efficiency.

Negligence,
liability for,
etc.

Compliance
with act,
what deemed.

SEC. 9. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than one hundred dollars or confined in the county jail not exceeding ninety days, or by both such fine and imprisonment in the discretion of the court.

Penalty.

TELEPHONE LINES AND TELEPHONE COMPANIES DECLARED COMMON CARRIERS.

An Act to declare telephone lines and telephone companies within the state of Michigan to be common carriers, to regulate the same and prescribing a penalty for the violation of this act.

[P. A. 138 of 1911.]

The People of the State of Michigan enact:

SECTION 1. All persons, corporations and associations operating telephone lines or exchanges doing a telephone business within the state of Michigan, are hereby declared to be common carriers; and all laws so far as applicable now in force or that may be hereafter enacted, regulating the transportation of persons or property by railroad companies within the state, shall apply with equal force and effect to telephone companies.

SEC. 2. The Michigan railroad commission shall have the general control of all telephones, telephone lines and telephone companies within the state, and shall investigate any alleged

General
control by
railroad com-
mission.

neglect or violation of the laws of the state by any person, firm, association or corporation doing a telephone business within the state, or by the officers, agents or employes thereof.

Public service.

SEC. 3. All persons, firms, associations and corporations doing a telephone business within this state are required to furnish reasonably adequate service and facilities for the use of their lines by the public. All charges made for any service rendered, furnished or performed, or to be rendered, furnished or performed within the state by any telephone company shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful; and the commission shall have power to make, alter, amend or abolish any rate or charge for any service, and may regulate by rules or orders any service or facility.

Power to
abolish rates,
etc.

Rebates, etc.,
unjust discrimination.

SEC. 4. If any telephone company doing business within this state shall directly or indirectly by any special rate, rebate, drawback or other device, charge, demand, collect or receive from any person or persons, firm or corporation a greater or less compensation for any service rendered, furnished or performed than it charges, demands, collects or receives from any other person or persons, firm or corporation for rendering, furnishing or performing for him or them a like contemporaneous service, such telephone company shall be guilty of unjust discrimination which is hereby prohibited and declared to be unlawful. It shall further be unlawful for any person, firm or corporation directly or indirectly to ask, demand or accept any rebate, drawback or other device whereby he shall obtain telephone service for any less rate than that charged others in like circumstances.

Prejudice or
disadvantage.

SEC. 5. It shall be unlawful for any telephone corporation doing business within this state to make or give any preference or advantage to any person, company, firm, corporation or locality, or subject any person, firm, company, corporation or locality to any prejudice or disadvantage in any respect whatever.

Application
for connection.

SEC. 6. Whenever application shall be made to the Michigan railroad commission by any party in interest to order the physical connection of any local telephone exchange, operated by any person, co-partnership or corporation, with the local telephone exchange operated by any other person, co-partnership or corporation in the same city or village, the said commission shall give due notice to the respective persons, co-partnerships or corporations owning or operating such telephone exchanges of a hearing to be had upon such application, and such hearing shall be conducted in the manner herein prescribed for hearings of complaints under the provisions of this act; and, after such hearing and such other investigation made either by itself or its servants and agents, said Michigan railroad commission shall determine, by its order duly made and entered upon its records, whether or not such

Notice.

physical connection is required by the public necessity or convenience in the case brought before it by such application. If said commission shall decide that such connection is so required, the telephone companies affected by such order shall furnish and maintain all reasonable and proper facilities for the interchange of service between their respective exchanges affected by such order, including all necessary trunk lines, switchboards, wires, aerial or cable, crossarms, poles or other fixtures; all necessary construction, maintenance and equipment to be built and maintained in such manner, under such rules, and with such division of expense and labor as shall or may be required or provided by the Michigan railroad commission. Every telephone corporation affected by such order is hereby required to perform switching service for any other telephone corporation similarly affected by connecting its lines temporarily with the lines of the other telephone corporation, providing for the direct transmission of messages between subscribers, and shall request the connection of its lines with the lines of the other telephone corporation on request of any of its subscribers. Any telephone corporation which is required to perform switching service for another telephone corporation under the terms of such an order may demand and receive as compensation for such service the sum of five cents per message in addition to the regular service charge, if any. The telephone corporation on whose line or lines messages originate shall be responsible to and make settlement with the terminal companies performing the switching service for it on its request, and may demand and receive from its subscribers a fee of five cents per message in addition to the regular service charge if any for all messages sent by it to other telephone companies on request of such subscribers in accordance with the provisions of this act. Whenever a subscriber of any telephone company affected by such order of the Michigan railroad commission desires to talk with a subscriber of another telephone corporation so affected, who is connected with an exchange other than that in the city, village or township in which the message originates, the switching service between the companies shall be done at whatever point may be designated by said railroad commission. The company at whose exchange messages of this kind originate may demand and receive from its subscribers the charge for switching service as provided above in addition to the regular toll charges of the companies over whose line or lines or affiliated line or lines the messages are sent; and the division of commissions and toll charges shall be made between the companies in such proportion as said railroad commission may designate: Provided, That the provisions of this section in regard to switching charges shall not apply when two or more competing companies in any locality shall merge or consolidate their property and business in such locality under the direction of the said railroad commission of this state, or when one competing company shall

Interchange
of service.Division of
expense.Switching
service.Compensa-
tion.Settlement
with terminal
companies.Subscribers to
pay fee.Switching
point design-
ated.Proviso, con-
solidation.

Rules and
orders.

sell or lease its plant, property and business to another company in the same locality, such merger, consolidation, sale or lease, if with the approval of the said railroad commission being hereby declared lawful. The Michigan railroad commission may make all such reasonable rules or orders as may be reasonable or necessary to carry out the intent of the provisions of this section, and refusal to obey such rules, orders or provisions of this section shall be unlawful.

Franchise to
construct.

SEC. 7. Any person, co-partnership or corporation desiring to obtain a franchise to construct a telephone system in any municipality in the state of Michigan, shall apply to said railroad commission for a certificate of public convenience and necessity, and said commission may grant or withhold said certificate after a public hearing and investigation upon the merits of the application in the manner provided herein for the holding of public hearings and investigation on complaint, and no such person, co-partnership or corporation shall be granted a franchise in any municipality in the state of Michigan to construct a telephone system until they have received a certificate of public convenience and necessity herein provided for.

Complaints.

SEC. 8. The said commission shall have authority to hear and determine the complaints of any person, firm, association, corporation, body politic or municipal corporation, against the rates and charges or the service rendered or facilities furnished, or complaints as to service withheld or refused to be rendered, furnished or performed by persons, firms or corporations within the terms of this act.

Notice before
rate is
established.

SEC. 9. Before any rate shall be fixed or established by the said commission, it shall give the telephone company to be affected thereby at least thirty days' notice of the time and place when and where a hearing will be given said telephone company concerning the fixing or establishing of said rate, and the commission shall have the power to compel the attendance of witnesses as in cases arising under act number three hundred of the public acts of nineteen hundred nine.

Make rules to
govern
hearings, etc.

SEC. 10. The said commission shall have the power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings of telephone companies and other companies before it in the establishment of rates, facilities, charges, service and other acts required of it under this act, which rules shall as near as may be conform to the practice heretofore established under act number three hundred of the public acts of nineteen hundred nine.

Testimony,
books, etc.

SEC. 11. The said commission shall have the power to administer oaths, certify to all official acts and to compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony.

Actions
against com-
mission.

SEC. 12. Any telephone company or other party in interest, being dissatisfied with any order of the commission fixing any rate or rates, charges, joint rate or rates, or any order fixing any regulations, practices or services, may within

thirty days from the issuance of such order and notice thereof commence an action in the circuit court in chancery against the commission as defendant to vacate and set aside any such order on the ground that the rate or rates, charges, joint rate or rates fixed are unlawful or unreasonable, or that any such regulation, practice or service fixed in such order is unreasonable; in which suit the commission shall be served with a subpoena and a copy of the complaint. The commission shall file its answer and on leave of court any interested party may file an answer to said complaint. Upon the filing of the answer of the commission said cause shall be at issue and stand ready for hearing upon ten days' notice by either party. All suits brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the circuit court shall always be deemed open for the hearing thereof, and the same shall proceed, be tried and determined as other chancery suits. Any party to such suit may introduce original evidence in addition to the transcript of evidence offered to said commission, and the circuit courts in chancery are hereby given jurisdiction of such suits and empowered to affirm, vacate or set aside the order of the commission in whole or in part, and to make such other order or decree as the courts shall decide to be in accordance with the facts and the law.

Suits to have precedence.

Original evidence.

SEC. 13. No injunction shall issue suspending or staying any order of the commission, except upon application to the circuit court in chancery or to the judge thereof, notice to the commission having been given and hearing having been had thereon.

Injunctions.

SEC. 14. If upon the trial of said action evidence shall be introduced by the complainant which is found by the court to be different from that offered upon the hearing before the commission or additional thereto, the court, before proceeding to render judgment, unless the parties in such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for fifteen days from the date of such transmission. Upon receipt of such evidence the commission shall consider the same, and may alter, modify, amend or rescind its order relating to such rate or rates, charges, joint rate or rates, regulations, practice or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence. If the commission shall rescind its order complained of the action shall be dismissed; if it shall alter, modify or amend the same such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission judgment shall be rendered upon such original order.

Evidence at trial.

Modification of rates, etc.

When action dismissed.

Judgment.

Appeal to
supreme
court.

Precedence.

Burden of
proof.

Annual state-
ment to
railroad com-
mission.

Manner and
form of
accounts, etc.

Proviso.

Schedule of
rates filed
with railroad
commission.

Failure to file.

SEC. 15. Either party to said action within sixty days after service of a copy of the order or judgment of the court, may appeal to the supreme court, which appeal shall be governed by the statutes and rules of court governing chancery appeals. When the appeal is taken the case shall, on the return of the papers to the supreme court, be immediately placed on the calendar of the then pending term, and shall be brought to a hearing in the same manner as other cases on the calendar, or if no term is then pending shall take precedence of cases of a different nature, except criminal cases, at the next term of the supreme court.

SEC. 16. In all actions under this section the burden of proof shall be upon the complainant to show by clear and satisfactory evidence that the order of the commission complained of is unlawful or unreasonable, as the case may be.

SEC. 17. Each telephone company within the state is hereby required to make, on or before the first day of December of each year upon blanks to be furnished by the Michigan railroad commission, a statement of its income and expense for the preceding fiscal year, amount of stock and other securities issued, investment in exchanges, toll lines, real estate and such other information as said commission may require, said statement to be made under the oath of the president and secretary of the company.

SEC. 18. The Michigan railroad commission shall have the power and authority and it is hereby made its duty to prescribe the manner and the form of accounts, records and memoranda and of keeping of same, and it shall be the duty of all telephone companies within the state to keep accounts, books of accounts, records and memoranda in the manner and form prescribed by the said commission, and in no other manner and form: Provided, however, That no such regulations shall be in duplication of or in addition to any regulations covering the same subject matter made by the government of the United States or any municipality of this state.

SEC. 19. Each telephone company within the state shall have on file and accessible to the public in its principal place of doing business, a schedule of the rates, charges and tolls made, charged or collected by said company for service rendered, furnished or performed, and for joint service rendered, furnished or performed and at its exchange or toll station a schedule of the rates, charges and tolls made, charged or collected by said company for service rendered, furnished or performed, and for joint service rendered, furnished or performed in connection with said exchange or toll station, and it shall be the duty of each telephone company within the state to file with the Michigan railroad commission a copy of each such schedule. It shall be unlawful for any telephone company within the state to neglect or refuse to have such schedule on file, or to neglect or refuse to file a copy of same with the said commission; and it shall be unlawful for any

telephone company within the state to make any other or different charge for service than that shown in said schedule.

SEC. 20. It shall be the duty of the Michigan railroad commission to furnish all telephone companies within the state a copy of all rates, charges or tolls fixed or established by the said commission. Railroad commission to furnish rates.

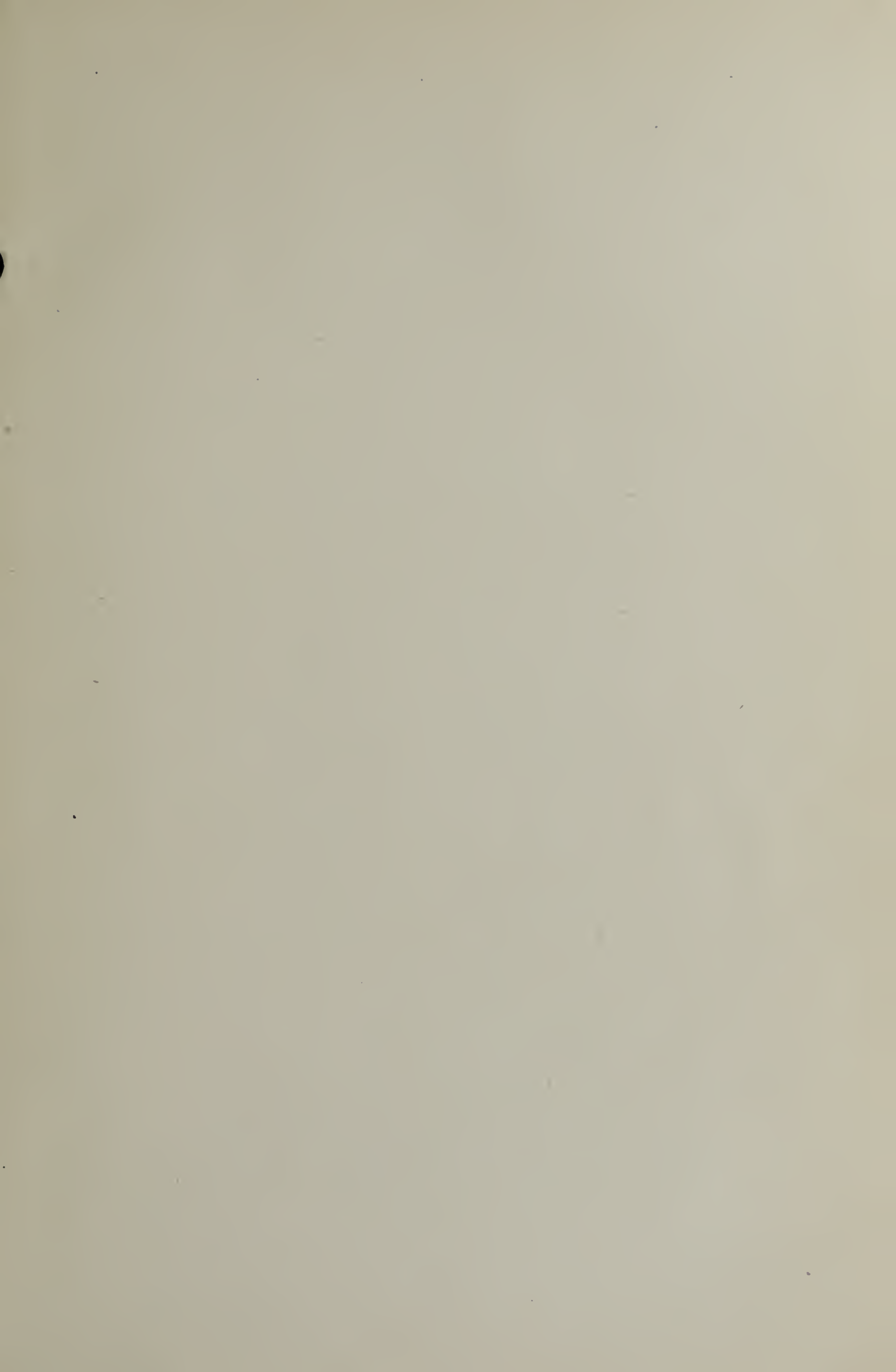
SEC. 21. If any telephone company within the state shall violate any of the provisions of the act, or shall, thirty days after the establishing or fixing thereof, have failed, neglected or refused to observe any rate, charge, toll or order fixed or established by the Michigan railroad commission, unless the enforcement of same shall have been enjoined by a court of competent jurisdiction or shall do or commit any other thing or act in this act declared to be unlawful, or shall omit to do or perform any act or thing, the omission to do which is in this act declared to be unlawful, such telephone company shall forfeit and pay to the state of Michigan for the first offense not less than fifty dollars nor more than one thousand dollars, and for each subsequent offense shall pay not less than one hundred dollars nor more than two thousand dollars. Any penalty herein provided for shall be collected under the direction of the attorney general in an action of assumpsit. Penalty. How collected.

SEC. 22. Every provision of this act, every section and every part of every section is hereby declared to be independent insofar as this relation shall be necessary to the validity of this act, and the fact that any provision, section, or part of any section is void shall not be held to invalidate any other portion of this act. Validity of act.

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STATE OF MICHIGAN

LAWS RELATING TO

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COMPILED UNDER THE SUPERVISION OF
COLEMAN C. VAUGHAN
SECRETARY OF STATE



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MICHIGAN RAILROAD COMMISSION.

LAWTON T. HEMANS, CHAIRMAN.
CASSIUS L. GLASGOW, COMMISSIONER.
CHARLES S. CUNNINGHAM, COMMISSIONER.

NOTE.—The numbers in parentheses, (), are compiler's sections and are consecutive throughout the book. The section mark § refers to the section of the compiled laws of 1897. The character / is used in citing Michigan cases, to avoid the repetition of Mich. Annotated with supreme court decisions to and including the 182nd Mich. report.

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CHAPTER I.—CONSTITUTIONAL PROVISIONS.

ARTICLE VIII.

LOCAL GOVERNMENT.

COUNTIES.

(1) SEC. 14. No navigable stream of this state shall be either bridged or dammed without permission granted by the board of supervisors of the county under the provisions of law, which permission shall be subject to such reasonable compensation and other conditions as may seem best suited to safeguard the rights and interests of the county and the municipalities therein. No such law shall preclude the state from improving the navigation of any such stream, nor prejudice the right of individuals to the free navigation thereof.

A stream is navigable when it is inherently capable of being used for the purposes of commerce, for the floating of vessels, boats, rafts or logs.—*People v. Grand Rapids-Muskegon Power Co.*, 164 / 121. By this section (Const. 1850, art. xviii, sec. 4) and C. L. § § 2494, 2495, the public right of navigation was intended to be protected; and the power given to supervisors, relating to the privilege of private parties to dam streams, is thereby limited to the intended purpose.—*Id.*

TOWNSHIPS.

(2) SEC. 19. No township shall grant any public utility franchise which is not subject to revocation at the will of the township, unless such proposition shall have first received the affirmative vote of a majority of the electors of such township voting thereon at a regular or special election.

CITIES AND VILLAGES.

(3) SEC. 23. Subject to the provisions of this constitution, any city or village may acquire, own and operate, either within or without its corporate limits, public utilities for supplying water, light, heat, power and transportation to the municipality and the inhabitants thereof; and may also sell and deliver water, heat, power and light without its corporate limits to an amount not to exceed twenty-five per cent of that furnished by it within the corporate limits; and may operate transportation lines without the municipality within such limits as may be prescribed by law: Provided, That the right to own or operate transportation facilities shall not extend to any city or village of less than twenty-five thousand inhabitants.

A city of the fourth class is not prohibited from entering into a contract for the erection of a public wharf upon lands owned by it at the foot of a street which terminates in navigable water.—*Nicholls v. Charlevoix Circuit Judge*, 155 / 455. Under this and the next sections municipal corporations are permitted to issue bonds for the purchase or acquisition of public utilities in excess of the limitation upon general bonded indebtedness, the excess to be secured only by the property purchased, without creating a debt against the municipality.—*Attorney*

General v. Common Council of Detroit, 164 / 369. See Muskegon Traction & Lighting Co. v. City of Muskegon, 167 / 331; Attorney v. Lindsay, 178 / 524.

(4) SEC. 24. When a city or village is authorized to acquire or operate any public utility, it may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law: Provided, That such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such city or village, but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.

See notes to preceding section.

(5) SEC. 25. No city or village shall have power to abridge the right of elective franchise, to loan its credit, nor to assess, levy or collect any tax or assessment for other than a public purpose. Nor shall any city or village acquire any public utility or grant any public utility franchise which is not subject to revocation at the will of the city or village, unless such proposition shall have first received the affirmative vote of three-fifths of the electors of such city or village voting thereon at a regular or special municipal election; and upon such proposition women taxpayers having the qualifications of male electors shall be entitled to vote.

GENERAL PROVISIONS.

(6) SEC. 28. No person, partnership, association or corporation operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any city, village or township for wires, poles, pipes, tracks or conduits, without the consent of the duly constituted authorities of such city, village or township; nor to transact a local business therein without first obtaining a franchise therefor from such city, village or township. The right of all cities, villages and townships to the reasonable control of their streets, alleys and public places is hereby reserved to such cities, villages and townships.

The city of Detroit has no such beneficial interest in its streets as to entitle it to maintain ejectment against a street railway corporation that continues to occupy its streets after the expiration of its franchise and without permission. The city may maintain suit in equity to compel the removal of the tracks.—City of Detroit v. D. U. Ry., 172 / 136. In an action for telephone rental due, defendant cannot raise the question that the company had no franchise from the township; only the public can raise the objection.—Union Telephone Co. v. Ingersoll, 178 / 187.

(7) SEC. 29. No franchise or license shall be granted by any municipality of this state for a longer period than thirty years.

A franchise granted to a street railway corporation, providing for no definite term is not void under this section, since the grant cannot extend beyond the constitutional period.—Peck v. D. U. Ry., 180 / 343.

ARTICLE X.

FINANCE AND TAXATION.

(8) SECTION 1. All subjects of taxation now contributing to the primary school interest fund under present laws shall continue to contribute to that fund, and all taxes from such subjects shall be first applied in paying the interest upon the primary school, university and other educational funds in the order herein named, after which the surplus of such moneys shall be added to and become a part of the primary school interest fund.

(9) SEC. 2. The legislature shall provide by law for an annual tax sufficient with other resources to pay the estimated expenses of the state government, the interest on any state debt and such deficiency as may occur in the resources.

(10) SEC. 3. The legislature shall provide by law a uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: Provided, That the legislature shall provide by law a uniform rule of taxation for such property as shall be assessed by a state board of assessors, and the rate of taxation on such property shall be the rate which the state board of assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes.

Under the sections of the constitution providing for uniformity of taxation and conferring power on the legislature to levy a state tax, etc., on cash valuation of property, the state may authorize the review of valuations and assessments by the board of state tax commissioners.—Atty. Gen. v. Midland Supervisors, 178/513.

The taxation of a mortgage upon real estate, in addition to the tax imposed upon the land itself, is not in violation of the constitutional requirement of uniformity in taxation, even if the mortgagor assumes the payment of both; since the payment of the mortgage tax is not a burden imposed by the state, but grows out of a contract voluntarily entered into, which is subject to the restrictions imposed by the statute relating to usury.—Stumpf v. Storz, 156/228. Deduction of the amount of indebtedness from personal property is not in violation of the constitutional requirement of uniformity; nor is such deduction an exemption within the meaning of constitutional and statutory provisions as to exemptions from taxation.—Id. The constitutional rule of uniformity of taxation does not apply to assessments for local improvements, which are governed by special rules, and are made upon the assumption that the property is specially and peculiarly benefited by a public improvement.—City of Detroit v. Weil, 180/593.

(11) SEC. 4. The legislature may by law impose specific taxes, which shall be uniform upon the classes upon which they operate.

Act 91, P. A. 1911, imposing a specific tax on mortgages, etc., is not unconstitutional for violation of this section; and the objection that the exemption of mortgages, etc., upon property of religious, charitable and other like societies, violates the rule of uniformity is not sustained.—Union Trust Co. v. Detroit Com. Council, 170/692.

(12) SEC. 5. The legislature may provide by law for the assessment at its true cash value by a state board of assessors, of which the governor shall be ex-officio a member, of the property of corporations and the property, by whomsoever owned, operated or conducted, engaged in the business of transporting passengers and freight, transporting property by express, operating any union station or depot, transmitting messages by telephone or telegraph, loaning cars, operating refrigerator cars, fast freight lines or other car lines and running or operating cars

in any manner upon railroads, or engaged in any other public service business; and for the levy and collection of taxes thereon.

(13) SEC. 6. Every law which imposes, continues or revives a tax shall distinctly state the tax, and the objects to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

(14) SEC. 7. All assessments hereafter authorized shall be on property at its cash value.

(15) SEC. 8. In the year nineteen hundred eleven, every fifth year thereafter and at such other times as the legislature may direct, the legislature shall provide by law for an equalization of assessments by a state board, on all taxable property, except that taxed under laws passed pursuant to sections four and five of this article.

(16) SEC. 9. The power of taxation shall never be surrendered or suspended by any grant or contract to which the state or any municipal corporation shall be a party.

ARTICLE XII.

CORPORATIONS.

(17) SECTION 1. Corporations may be formed under general laws, but shall not be created, nor shall any rights, privileges or franchises be conferred upon them, by special act of the legislature. All laws heretofore or hereafter passed by the legislature for the formation of, or conferring rights, privileges or franchises upon corporations and all rights, privileges or franchises conferred by such laws may be amended, altered, repealed or abrogated.

The act incorporating the supreme and subordinate lodges of the United Home Protectors' Fraternity does not create a corporation by special act.—People v. Wilson, 157 / 659. The legislature is authorized to amend, alter or repeal laws for the formation of corporations.—Deloria v. Atkins, 158 / 232.

(18) SEC. 2. The term "corporation" as used in this article shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and be subject to be sued in all courts in like cases as natural persons.

Stock of partnership associations, limited, are subject to the same rule for the assessment of property for taxation, as are trust companies.—Union Trust Co. v. Detroit Com. Council, 170 / 692.

(19) SEC. 3. No corporation shall be created for a longer period than thirty years, except for municipal, railroad, insurance, canal or cemetery purposes, or corporations organized without any capital stock for religious, benevolent, social or fraternal purposes; but the legislature may provide by general laws, applicable to any corporations, for one or more extensions of the term of such corporations, while such term is running, not exceeding thirty years for each extension, on the consent of not less than two-thirds of the capital stock of the corporation; and by like general laws for the corporate reorganization for a

further period, not exceeding thirty years, of such corporations whose terms have expired by limitation, on the consent of not less than four-fifths of the capital stock.

(20) SEC. 4. The stockholders of every corporation and joint stock association shall be individually liable for all labor performed for such corporation or association.

(21) SEC. 5. No corporation shall hold any real estate for a longer period than ten years, except such real estate as shall be actually occupied by such corporation in the exercise of its franchises.

This provision can be enforced only at the instance of the state.—*German Corporation v. Negaunee German Aid Society*, 172/650.

(22) SEC. 6. The legislature shall pass no law renewing or extending any special act of incorporation heretofore granted.

(23) SEC. 7. The legislature may, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on different railroads in this state, and may pass laws establishing reasonable maximum rates of charges for the transportation of property by express companies in this state, and may delegate such power to fix reasonable maximum rates of charges for the transportation of freight by railroad companies and for the transportation of property by express companies to a commission created by law; and shall prohibit running contracts between such railroad companies whereby discrimination is made in favor of either of such companies as against other companies owning connecting or intersecting lines of railroad.

(24) SEC. 8. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon at least sixty days' public notice to all stockholders in such manner as shall be provided by law.

(25) SEC. 9. No general law providing for the incorporation of trust companies or corporations for banking purposes, or regulating the business thereof, shall be adopted, amended or repealed except by a vote of two-thirds of the members elected to each house of the legislature. Such laws shall not authorize the issue of bank notes or paper credit to circulate as money.

ARTICLE XIII.

EMINENT DOMAIN.

(26) SECTION 1. Private property shall not be taken by the public nor by any corporation for public use, without the necessity therefor being first determined and just compensation therefor being first made or secured in such manner as shall be prescribed by law.

Consequential injuries resulting from a separation of grades in accordance with statutory authority do not constitute a taking of private property within the meaning of the constitution.—*City of Detroit v. G. T. R.*, 163/229. The exercise of the power of eminent domain is within the legislative control, subject to the provisions of the constitution, and the necessity, time and manner of its exercise are wholly legislative questions, subject to such re-

strictions.—*Loomis v. Hartz*, 165 / 662. Building restrictions are private property, an interest in real estate in the nature of an easement, go with the land, and are a property right of value, which cannot be taken for the public use without due process of law and compensation therefor.—*Allen v. City of Detroit*, 167 / 464, 473. The compensation to be awarded to the owner of real property, taken for a public highway, is not the full value of the fee, since the title remains in the owner, but he is entitled to receive the value of the easement, or the full value of the interest taken.—*Township of Custer v. Dawson*, 178 / 367.

(27) SEC. 2. When private property is taken for the use or benefit of the public, the necessity for using such property and the just compensation to be made therefor, except when to be made by the state, shall be ascertained by a jury of twelve freeholders residing in the vicinity of such property, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law: Provided, That the foregoing provision shall not be construed to apply to the action of commissioners of highways or road commissioners in the official discharge of their duties.

The jury is judge of the law and the facts.—*McDuffee v. Fellows*, 157 / 664.

(28) SEC. 3. Private roads may be opened in the manner prescribed by law; but in every case the necessity for the road and the amount of all damages to be sustained by the opening thereof shall be first determined by a jury of six freeholders or by not less than three commissioners, and such amount, together with the expense of proceedings, shall be paid by the person or persons to be benefited.

A private way to timber land over adjoining property must be opened in the manner prescribed by this section, requiring a jury of six freeholders or three commissioners to determine the necessity and damages therefor.—*Burdick v. Harbor Springs Lumber Co.*, 167 / 673.

CHAPTER II.—THE MICHIGAN RAILROAD COMMISSION.

SECTION I.—APPOINTMENT, POWERS, DUTIES, ETC.

An Act to define and regulate common carriers and the receiving, transportation and delivery of persons and property, prevent the imposition of unreasonable rates, prevent unjust discrimination, insure adequate service, create the Michigan railroad commission, define the powers and duties thereof, and to prescribe penalties for violations hereof.

[Act 300, P. A. 1909.]

The People of the State of Michigan enact:

(29) SECTION 1. A commission is hereby created to be Commission, when appointed, etc.
composed of three commissioners, not more than two of whom shall belong to any one political party. Within thirty days from the time this act shall take effect the governor shall appoint such commissioners. The term of one of said Terms.
commissioners so appointed and confirmed shall expire on the fifteenth day of January, nineteen hundred eleven, of one shall expire on the fifteenth day of January, nineteen hundred thirteen and of one on the fifteenth day of January, nineteen hundred fifteen. In January, nineteen hundred eleven, and biennially thereafter, there shall be appointed by the governor and confirmed by the senate one commissioner for the term of six years from January fifteenth of such year. Each commissioner shall hold his office until his successor is appointed and qualified. In event of the death, re-Vacancy.
moval or resignation of any of the said commissioners, the governor shall have power to appoint a successor to fill such vacancy, who shall hold office until the next session of the legislature, when an appointment shall be made to fill such vacancy, to be confirmed by the senate.

The act creating the commission and authorizing it to require physical connection between railroads for interchange of freight cars and traffic is not in violation of the commerce clause of the federal constitution.—Mich. R. R. Com'n v. M. C. R. Co., 168 / 230. Neither does said act deprive a company of its property without due process of law.—Id. Authority of commission to fix rates.—Railway Co. v. Railroad Commission, 171 / 335. This act is valid and since aggrieved parties are authorized to apply to the courts for relief against confiscatory orders, it cannot be said to deprive a railroad corporation of its property without due process of law.—D. & M. Ry. Co. v. Mich. Railroad Commission, 178 / 250.

(30) SEC. 2. (a) Said commissioners shall have the following qualifications: - One shall be an attorney having Qualifications.
knowledge of and experience in law relating to common car-

riers; the others shall have knowledge of traffic and transportation matters. Each of such commissioners shall devote to the duties of his office all the time necessary to insure the prompt and complete performance of all official duties, and said commission shall, so far as possible, arrange so that at all times during business hours, at least some one member shall be in attendance at the principal office of the commission every business day in the year;

Removal.

(31) (b) The governor may at any time remove any commissioner for any neglect of duty or malfeasance in office. Before such removal, he shall give such commissioner a copy of the charges against him, and shall fix a time when he can be heard in his own defense, which shall not be less than ten days thereafter, and said hearing shall be open to the public. If he shall be removed, the governor shall file in the office of the secretary of state a complete statement of the charges made against such commissioner and his finding thereon, with a record of the proceedings, it being herein provided and declared that such discretionary power in the governor to make such removal is a sound and reasonable discretion to be exercised for the good of the state, and not arbitrarily;

Charges,
statement of.

Pecuniary
interest.

(32) (c) No person so appointed shall be pecuniarily interested in any railroad or in the business of transporting persons or property in this state or elsewhere, and if any such commissioner shall voluntarily become so interested, his office shall ipso facto, become vacant; and if he shall become so interested otherwise than voluntarily, he shall, within a reasonable time, divest himself of such interests; failing so to do, his office shall become vacant, and the governor shall proceed as provided for in section two (b) of this act;

Oath.

(33) (d) Before entering upon the duties of his office, each of said commissioners shall take and subscribe the constitutional oath of office;

Salary.

(34) (e) Each of said commissioners shall receive an annual salary of three thousand dollars payable in the same manner as salaries of other state officers are paid;

Organization.

(35) (f) The commissioners appointed under this act shall forthwith, after their appointment and qualification, meet at the city of Lansing and organize by electing one of their members chairman, who shall serve until the fifteenth day of January, nineteen hundred eleven. On the fifteenth day of January in each odd numbered year the commissioners shall meet at the offices of the commission and elect a chairman, who shall serve for two years and until his successor is elected. A majority of said commissioners shall constitute a quorum to transact business, and any vacancy shall not impair the right of the remaining commissioners to exercise all of the powers of the commission so long as the majority remains. Any investigation, inquiry or hearing

Quorum.

which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner when so directed by the commission or its chairman. All such investigations, inquiries or hearings of a commissioner shall be and be deemed to be the investigations, inquiries and hearings of the commission, and every decision and order made by a commissioner, when approved and confirmed by the commission and ordered filed in its office, shall be and be deemed to be the decision and order of the commission: Provided, That any interested party shall be entitled to a re-hearing before the full commission on request served upon the commission within five days after service of such order upon such party. In the absence of a quorum of the commission at the time appointed for any hearing before such commission, such hearing may be continued to a later date by a single member of the commission present or, in the absence of any member, by the secretary;

Hearings, etc.

Proviso,
re-hearing.

(36) (g) Said commission may appoint a secretary at a salary of not more than two thousand dollars per annum and a chief clerk at a salary of not more than fifteen hundred dollars per annum, and employ not more than five clerks, and such inspectors, examiners and experts as may be necessary to perform what may be required of them, and shall fix their compensation. It shall be the duty of any such inspector, on the order of the commission, and he shall have the right to inspect all equipment, cars, power houses, trolley lines, tracks and property of every common carrier as defined in this act. Each such inspector shall likewise have the right to inspect freight in cars or warehouses of such common carriers, and all waybills, bills of lading and shipping receipts of such transportation companies, so that they may determine whether the classification and rating of such freight is in conformity with the published tariffs and classifications of such transportation companies. Said inspectors shall be employed at a fixed compensation;

Secretary,
etc., salary,
etc.

(37) (h) The secretary shall take and subscribe to an oath similar to that of the commissioners, and shall keep full and correct records of all transactions and proceedings of the commission, and shall perform such other duties as may be required by the commission. Any person ineligible to the office of a commissioner shall be ineligible to the office of secretary. He shall devote his entire time to his office;

Secretary,
oath, etc.

(38) (i) The said commission may appoint a chief inspecting engineer at a salary of not to exceed two thousand dollars per annum, to be fixed by such commission, whose duty it shall be, under the instructions of the commission, to make such inspections and reports as may be ordered by the commission as regards the public safety, health and convenience, and which the commission may deem essential to full and thorough information as to physical condition of the properties of the various common carriers of the state and

Chief inspect-
ing engineer,
salary, etc.

the proper enforcement of the police regulations enacted for the control and management of the same. Such engineer shall have such general knowledge of the requirements of railroad operation, signal appliances and safety devices as shall fit him to perform the duties imposed upon him by the provisions of this act;

How known.

(39) (j) The commission shall be known collectively as "Michigan Railroad Commission," and in that name may sue and be sued. It shall have a seal with the words "Michigan Railroad Commission," and such other design as the commission may prescribe engraved thereon, by which it shall authenticate its proceedings and of which the court may take judicial notice;

Offices, where located.

(40) (k) The commission shall have its offices at Lansing, and shall be provided suitable offices, necessary office furniture, supplies, stationery, books, periodicals, maps, printing, and all its necessary expenses shall be audited and paid as other necessary state expenses are audited and paid.

Expenses.

The commission may hold meetings at other places than its said offices when the convenience of the parties so requires. The commissioners, secretary, clerks and inspectors and such experts as may be employed, shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the commission, such expenditures to be sworn to by the person who incurred the expense and to be approved by the chairman of the commission. Members of the commission, when traveling on official business of the commission pertaining to railroads, and employes of the commission when traveling on official business of the commission pertaining to railroads and by the direction of the commission, shall be carried free in performance of their duties, on all railroads within this state, upon all trains and cars, and upon any parts of such trains or cars: Provided, That any such person who shall suffer himself to be carried free on any train or car by any such railroad company, when not traveling on official business of the commission and not by direction of the commission, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment not more than ninety days, or by both such fine and imprisonment in the discretion of the court;

Proviso.

Rules, regulations, etc.

(41) (l) The commission shall have the power to adopt and publish rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of common carriers and other parties before it, and all hearings shall be open to the public;

May confer with R. R. commissioners of other states, etc.

(42) (m) The commission may confer by correspondence, by attending conventions, or otherwise, with the railroad commissioners of other states, with the interstate com-

merce commission or with any other bodies considering any matters pertaining to common carriers.

(43) SEC. 3. (a) The term "common carrier" as used in this act shall be construed to mean and embrace all corporations, companies, individuals, associations of individuals, their lessees, trustees or receivers appointed by any court whatsoever who now or may hereafter own, operate, manage or control as a common carrier in this state, any railroad or part of any railroad, whether operated by steam, electricity or other motive power, or cars or any other equipment used thereon, or bridges, switches, spurs, tracks, sidetracks, terminal facilities, or any docks, wharves or storage elevators used in connection therewith or any kind of terminal facilities used or necessary in the transportation of persons or property designated herein, and also all freight depots, yards and grounds used or necessary for the transportation or delivery of any said property and whether the same are owned by said railroad or otherwise; or any express company, car loaning companies, freight or freight line companies and all associations or persons, whether incorporated or otherwise, that shall do business as common carriers upon or over any line of railroads in this state, or any common carrier engaged in the transportation of passengers and property wholly by rail or partly by rail and partly by water.

(44) (b) The term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment, or carriage, irrespective of ownership, or of any contract expressed or implied for the use thereof, and all services in connection with the receipt, delivery, elevation, switching and transfer in transit, ventilation, refrigeration or icing, storage and handling of persons or property transported.

(45) (c) The term "railroad" as used in this act shall be construed to mean all railroads, whether operated by steam, electric or other motive power: Provided, That the provision of this act shall not apply to any logging or other private railroad not doing business as a common carrier: Provided further, Nothing in this act contained shall be construed to authorize the commission to interfere with, lessen or impair or to authorize the impairment of any franchise provision, contract or agreement as to rate of fare now existing between any municipality, city, village, or township and any tram railway, street railway, interurban or suburban railway company, or to increase or lessen the rate of fare fixed by such franchise, contract or agreement, or to deprive any tram railway, street railway, interurban or suburban railway company of the right to charge for the carriage of passengers the rate of fare authorized and fixed by any franchise, grant or contract made or entered into between any municipality, city, village or township and any such tram railway, street railway, interurban or suburban railway com-

Further
proviso.

pany: Provided further, That nothing in this act contained shall apply to street and electric railroads engaged solely in the transportation of passengers within the limits of cities or within a distance of five miles of the boundaries thereof.

Street and electric railroads.—City of Detroit v. D. U. Ry., 172 / 136, 157.

Property,
etc., trans-
portation of.

(46) (d) The provisions of this act shall apply to the transportation of passengers and property between points within this state, and to the receiving, switching, delivering, storing and handling of such property, and to all charges connected therewith, including icing and mileage charges: Provided, however, That this provision shall not be construed as a limitation on the authority of the commission created by this act to prescribe car service and demurrage rules applicable to all traffic beginning or ending within this state.

Proviso.

Express com-
panies, etc.

(47) (e) Express companies and sleeping car companies doing business for hire within this state are hereby defined to be common carriers.

Am. 1911, Act 173.

Service, etc.

(48) SEC. 4. (a) Every common carrier is hereby required to furnish reasonably adequate service and facilities and shall provide and furnish transportation of passengers and property upon reasonable requests therefor, and all charges made for any service in connection therewith, or for the receiving, switching, delivering, storing, transporting or handling of such persons or property shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful;

Interchange
of traffic.

(49) (b) All railroads incorporated under the general railroad law of this state, as between themselves, and all electric railroads, as between themselves, shall establish through routes and just and reasonable rates applicable thereto, except as hereinafter provided;

Unlawful
charges.

(50) (c) Whenever passengers or property are transported over two or more connecting lines of railroad between points in this state, and the railroad companies have made joint rates for the transportation of the same, such rates and all charges in connection therewith shall be just and reasonable, and every unjust and unreasonable charge is prohibited and declared to be unlawful: Provided, That a less charge by such railroads for their proportion of such joint rates than is made locally between the same points on their respective lines shall not for that reason be construed as a violation of the provisions of this act, nor render such railroads liable to any of the penalties hereof.

Proviso.

Free trans-
portation.

(51) SEC. 5. (a) No common carrier, subject to the provisions of this act shall hereafter, directly or indirectly, issue or give any free ticket, free pass, or free transportation for passengers, except to its employes or their families,

its officers, agents, surgeons, physicians or attorneys at law and members of their families; or to former railroad employes and members of their families, when such employes have become disabled in the railway service, or retired upon pension, and to the members of the families of deceased employes; to ministers of religion, traveling secretaries of railroad young men's Christian associations, persons engaged exclusively in charitable and eleemosynary work; to indigent, destitute and homeless persons and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes or homes for disabled volunteer soldiers, and sailors' homes, including those about to enter and those returning home after discharge, boards of managers of such homes; to necessary caretakers of live stock, poultry, fruit and vegetables; to employes on sleeping cars and express cars; to linemen of telegraph and telephone companies and others engaged in the care and operation of telegraph and telephone lines; to railroad postal employes, post office inspectors, custom inspectors and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured or killed in accidents and members of the families of the same, and physicians and nurses attending such persons, and dependent relatives of injured or deceased employes, and such other persons as the commission may from time to time by special order designate: Provided, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, attorneys and employes of common carriers and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence or otherwise calamitous visitation: Provided further, That nothing shall be construed to prohibit the exchange of mileage for advertising in publications of general circulation. Any common carrier wilfully violating this provision shall be deemed guilty of a misdemeanor and for such offense, on conviction, shall pay to the state of Michigan a penalty of not less than one hundred dollars nor more than five hundred dollars, and any person, other than persons excepted in this provision, who uses any such free ticket, free pass or free transportation, shall be subjected to a like penalty; Proviso.

A party not included in those classes who are permitted to ride free is a mere licensee, when riding on a logging train, and whether he innocently or wilfully violated the law, he is entitled to no greater rights than one who procured a pass by consenting to assume all risks of transportation.—Van Auken v. M. C. R. Co., 182 / 331.

(52) (b) Nothing herein shall prevent the carriage, storage or handling of freight free, or at reduced rates for the United States, the state or any political subdivision Carriage, etc.,
of freight.

thereof, or any municipality thereof, or for charitable purposes, or to and from fairs and expositions for exhibition thereat, or household goods, or other personal property of railroad employes, or the interchange of franks for the free transportation of personal property of the officers, agents, attorneys and employes of common carriers and their families; nor to prohibit any common carrier from carrying property free with the object of providing relief in cases of general epidemic, pestilence or other calamitous visitations, or the issuance of mileage, commutation, excursion passengers' or party tickets: Provided, That such tickets shall be obtainable by all persons applying therefor under like circumstances and conditions without discrimination.

Proviso.

Switch connections.

(53) SEC. 6. (a) Any railroad, subject to the provisions of this act, upon application of any shipper tendering traffic for transportation, shall construct, maintain and operate upon reasonable terms a switch connection with any private side track, when such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of same, and shall furnish cars and transport to the best of its ability any traffic tendered to, over or from such private side track, without discrimination in favor of or against any such shipper: Provided, This shall not be construed to compel a railroad to remove from or deliver on a private sidetrack traffic tendered in less than car lots: Provided further, That shipments of live stock, perishable property and explosives may have precedence over all other classes of merchandise. If any railroad shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, any shipper may make complaint to the commission, as provided by section twenty-two of this act, and the commission shall make investigation of the same, and it shall determine as to the safety, practicability and justification thereof, and shall fix a reasonable compensation therefor, and the commission shall make an order as provided in section twenty-two of this act, directing the railroads to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the commission, other than orders for the payment of money;

Proviso.

Further proviso.

Spur track.

(54) (b) Every railroad shall provide a reasonable, adequate and suitable spur track to and to and upon the grounds of any mill, elevator, storehouse, warehouse, dock, wharf, pier, manufacturing establishment, lumber yard, coal dock or other industry or enterprise, wherever such spur track does not necessarily exceed two miles in length and is practically indispensable to the successful operation of any such industry or enterprise, and shall connect such spur track with its main track and operate the same in connec-

tion therewith: Provided, That such railroad may require Proviso.
 the person or persons, firm, corporation or association primarily to be served thereby, to pay the legitimate cost and expense of acquiring by condemnation or purchase where necessary the rights of way for such spur track, and of constructing the same, in which case the total estimated cost thereof shall be deposited with the railroad before the railroad shall be required to incur any expense whatever therefor. No railroad shall, however, be required to provide a spur track where it is unusually unsafe and dangerous: Provided, That in the event of the failure of said shipper and Proviso.
 the said railroad to agree, the necessity for, reasonableness of, and practical safety of such spur track and connection and the operation thereof shall be decided by the said Michigan railroad commission upon complaint and hearing as provided in section twenty-two of this act.

(55) SEC. 7. (a) All railroads subject to the provisions Interchange of traffic.
 of this act shall afford all reasonable and proper facilities by the establishment of switch connections between one another and the establishment of depots and otherwise for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall transfer and deliver without unreasonable delay or discrimination any freight or cars or passengers destined to any point on its own line or on any connecting line, and shall not discriminate in their rates and charges between such connecting lines: Provided, Precedence may be given to live stock and perishable property. Proviso, precedence.
 Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business, except that carload traffic shall be received and transported from any junction point or transfer point or intersection with another railroad in any city or town, destined to team tracks or other sidings in the same city or town as hereinafter provided. Any person or any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier subject to the provisions of this act shall have the right and privilege of routing such shipments and of prescribing and directing over what connecting line property so shipped shall be transported, and it shall be the duty of the initial carrier to observe the direction of such person or such officer or agent of any corporation or company, and to cause such freight to be transported over such connecting line as may be directed and required by such shipper. When Routing.
 freight is shipped in intrastate commerce and any person or officer or agent of any corporation or company who shall deliver property for transportation does not prescribe over what connecting line such property shall be transported, it shall be the duty of the initial carrier to so route the freight Intrastate commerce.

Interchange
of cars, etc.

as to give the property the benefit of the lowest rate published between points of origin and destination;

Proviso,
through
billing.

(56) (b) Where it is practicable and the same may be accomplished without endangering the equipment, tracks or appliances of either party, the commission may, upon application, require steam railroads and interurban and suburban railroads to interchange cars, carload shipments, less than carload shipments and passenger traffic, and for that purpose may require the construction of physical connections upon such terms as it may determine: Provided, That nothing in this act shall be construed to require through billing of freight as between steam and electric, suburban or interurban railroads; but such suburban and interurban railroads may be used for handling of freight in carload lots in steam railroad freight cars between shippers or consignees and the steam railroads, in the same manner and under the same general conditions, except as to motive power, as belt line railroads and terminal railroads are now or may hereafter be used for like purposes;

Merchandise,
etc., of other
lines.

Proviso, cars
in running
order.

Further
proviso,
commission to
determine.

(57) (c) Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks: Provided, Such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise safe for transportation and properly loaded: Provided further, If the corporations cannot agree upon the times at which the cars shall be drawn or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and interests of the corporation or corporations and the public to be accommodated thereby, and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised;

Local traffic.

(58) (d) Every common carrier operating within this state shall receive and transport at reasonable rates any and all carload traffic offered for transportation under the usual conditions locally consigned between points in the same city or town and shall receive and transport at reasonable rates from any junction point or transfer point or intersection with another railroad in such city or town any and all such carload freight destined to team tracks or other sidings on any line operated by the delivering carrier, and shall deliver such car or cars upon such team tracks or sidings in the city or town where such car or cars are received from such connecting line when required so to do: Provided, That when delivery is requested which will involve the use of a private siding not owned or controlled by consignee, said consignee shall file with both

Team tracks,
etc.

Proviso,
private
sidings.

receiving and delivering carriers written permission signed by the owner or lessee of such private siding authorizing the use of same. When the particular delivery desired cannot be accomplished owing to the congestion of cars upon such siding or team tracks, it shall be the duty of the delivering carrier to notify consignee of such conditions and it shall be the duty of consignee upon receipt of such notice to advise upon what other siding delivery will be accepted or whether or not it is desired that such car or cars shall be held waiting the opportunity for delivery upon the siding originally designated as the destination.

When delivery cannot be accomplished.

(59) (e) That any common carrier, railroad or transportation company receiving property for transportation from a point in the state of Michigan to another point within the state of Michigan, shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it or by any common carrier, railroad or transportation company to which said property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule or regulation, shall exempt such common carrier, railroad or transportation company from the liability hereby imposed: Provided, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law: Provided further, That the property so received for transportation shall move entirely within the boundaries of the state of Michigan between the points of shipment and its destination: And provided further, That the common carrier, railroad or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad or transportation company, on whose line or lines the loss, damage or injury shall have been sustained, the amount of such loss, damage or injury as it may be required to pay to the owners of such property as may be evidenced by any receipt, judgment or transcript thereof.

Liable for loss, etc.

Proviso, right of action.

Further proviso, within boundaries of state.

Further proviso, recovery of damages.

Am. 1911, Act 139; 1913, Acts 370, 389; 1915, Act 278.

(60) SEC. 8. Every railroad shall, when within its power so to do, and upon reasonable notice, furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight in carload lots. Every common carrier shall have sufficient cars and motive power to meet all requirements for the transportation of passengers and property which may reasonably be anticipated. In case of insufficiency of cars at any time to meet all requirements, such cars as are available shall be distributed among the several applicants therefor without discrimination between shippers or between points of shipment, whether competitive or non-competitive: Provided, Preference may be given to shipments of live-stock and perishable

Railroad to furnish cars.

Proviso, preference.

property. The commission shall have power to make and enforce, and shall make and enforce reasonable regulations for the furnishing and distribution of freight cars to shippers and switching the same, and for the loading and unloading thereof, and for the weighing of the cars and the freight offered for shipment over any line of railroad and shall fix a reasonable per diem demurrage to be paid for the detention of cars by shipper or consignee (which said car service and demurrage rules and regulations shall be applicable to all traffic whether the same begin or end within the state of Michigan), and for the failure or delay of the railroad in the furnishing of such cars and for the failure of the railroad to move the cars the number of miles per day as ordered by the commission.

Am. 1911, Act 173.

Ann Arbor R. Co. v. Mich. R. Commission, 163 / 49. Evidence tending to support claim of neglect to provide refrigerator cars properly submitted under this section.—Fremont Canning Co. v. Pere Marquette R. Co., 180 / 283.

Unlawful to charge more for shorter hauls.

Construction of act.

Proviso, commission may relieve from act.

Two or more rates, etc.

(61) SEC. 9. It shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater fare or rate for the transportation of passengers or like kinds of property under substantially similar circumstances and conditions for a shorter than a longer distance over the same line, in the same direction, the shorter being included within the longer distance, but this act shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter distance as for a longer distance: Provided, however, That upon application to the commission appointed under the provisions of this act such common carrier may, in special cases after investigation by the commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property, and the commission may from time to time prescribe the extent to which a designated common carrier may be relieved from the operation of this section of this act. When there are two or more rates in effect between the same points, via the same route, the lowest published rate shall be the only legal rate applicable in this state. In the event a published through rate exceed any combination of two or more local rates between the same points within the state, the combination forming the lowest rate shall govern.

Am. 1915, Act 277.

Schedule of rates, etc.

(62) SEC. 10. (a) Every common carrier subject to the provisions of this act shall file with the commission created by this act and print and keep open to public inspection in each of its depots and offices, schedules showing all rates, fares and charges for transportation, both of passengers and property, between different points on its own route, and between points on its own route and on the route of any

other carrier, when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any common carrier, shall plainly state the places between which property and passengers will be carried and shall contain the classification of freight in force and shall also state separately all terminal charges, storage charges, icing charges and all other charges which the commission may require, all privileges or facilities granted or allowed and any rules or regulations which in anywise change, affect or determine any part of or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered to the passengers, shipper or consignee: ^{What to state.} Provided, ^{Proviso,} That where local switching tariffs are in effect at a competitive point, it shall be sufficient if the schedule state that the terminal charges shall be subject to the rules of such local switching tariffs. Such schedules shall be printed plainly in large type, and copies for the use of the public shall be kept on file for public inspection in every depot, station or office of such carrier where passengers or freight respectively are received for transportation or where tickets are sold, in such form that they will be accessible to the public and can conveniently be inspected. The provisions of this section shall apply to all traffic and transportation and facilities defined in this act; ^{local switch-}ing tariffs.

(63) (b) No change shall be made in the schedule of rates, fares or charges or joint rates, fares or charges which have been filed and published by common carriers in compliance with the requirements of this section, except after ten days' notice to the commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule of rates, fares or charges or joint rates, fares or charges, then in force and the time when such changed rates, fares or charges or joint rates, fares or charges will go into effect, and no such rates, fares or charges or joint rates, fares or charges shall be discontinued, except after giving such notice as is required for changing rates, fares or charges or joint rates, fares or charges, and the proposed changes in such rates, fares or charges or joint rates, fares or charges shall be shown by printing and filing new tariffs thereto or by showing such changes or discontinuance by issuing and filing of supplements in the regular manner now provided and keeping same open to public inspection: ^{Change of rates, etc., notice of.} Provided, That the commission may, in its discretion and for good cause shown, allow changes upon less time than the notice herein specified, or modify the requirements in this section in respect to publishing, posting and filing of tariffs, either in particular instances or by a general order ^{Proviso.}

Further
proviso.

applicable to special or peculiar circumstances or conditions: Provided further, That upon the filing with the commission by a common carrier of any tariff or supplement showing any change in rates, fares or charges or joint rates, fares or charges or a discontinuance of any rate or rates, fares or charges or joint rates, fares or charges, it shall be lawful for the said commission and it is hereby authorized acting upon its own initiative or upon complaint to postpone the date when such new rate or rates or joint rates, fares or charges or discontinuance of rate or rates or joint rates, fares or charges, shall become effective to such time not to exceed in all forty-five days as shall give the said commission opportunity to investigate the reasonableness of such proposed rate or rates or discontinuance of rate or rates, and it shall thereupon be lawful for said commission and it is hereby authorized to proceed with all convenient speed with an investigation upon at least five days' notice to said common carrier either upon its own initiative or upon complaint as to the reasonableness of said rate or rates, or the discontinuance of said rate or rates, follow the procedure as near as may be, and make its order therein in the manner hereinafter provided in section twenty-two of this act, such investigation to take precedence of all matters of a different nature pending before the commission.

Joint tariff
concurrence.

(64) (c) The names of the several carriers which are parties to any joint tariff shall be specified therein and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission, and where evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties;

Form of
schedule.

(65) (d) The commission may determine and prescribe the form in which the schedules required by this section to be kept open to the public inspection shall be prepared and arranged and may change the form from time to time as may be found expedient;

Conformity.

(66) (e) Such schedules shall, so far as is practicable, conform to the forms prescribed by the interstate commerce commission;

Irregular
rates, etc.

(67) (f) No carrier, unless otherwise provided by this act, shall engage or participate in the transportation of passengers or property as defined in this act, unless the rates, fares and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this act, nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property or for any service in connection therewith between the points named in such fares and charges which are specified

in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares and charges so specified, nor extend to any shipper or person any privilege or facilities in the transportation of persons or property, except such as are specified in such tariff;

(68) (g) Within six months after the delivery of any shipment of freight at destination any person aggrieved may ^{Complaints, etc., how made.} complain to the commission that the charge exacted for the transportation of such freight between points in Michigan is irregular or exorbitant, and thereupon the commission shall have power to investigate such complaint, and to hear the ^{Hearing.} same and to decide upon the merits thereof; in the manner provided by section twenty-two of this act. If, upon such hearing, the commission shall decide that the rate or charge exacted is irregular or exorbitant it shall find what, in its judgment, would have been a reasonable rate or charge for the service complained of. If the rate or charge so found shall be less than the charge exacted the carrier shall have the right to refund to the person paying such charge the amount so found to be excessive. In case of the refusal of the carrier to make such refund, the party aggrieved thereby ^{Action to recover.} may maintain an action in the courts of this state to recover the amount of such excessive charge as found by said commission, and in the trial thereof the findings of the commission shall be prima facie evidence of the truth of the facts found by it, and no carrier shall be permitted to avail itself of the defense of such action that the shipment involved was in fact made on the published tariff rate in force at the time such shipment was made, but no carrier making a refund upon the order of the commission or pursuant to a judgment of court as herein provided, shall be liable for any penalty or forfeiture, or subject to any prosecution under the laws of this state on account of making such refund;

(69) (h) In time of war or threatened war preference ^{Transportation of troops.} and precedence shall, upon the demand of the governor of the state, be given over all other traffic to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic;

(70) (i) Every common carrier within this state shall ^{Schedule of rates, filing of.} within ninety days, unless further time be granted by the commission, file in the office of the commission copies of all schedules of rates, including joint rates in force on its line or lines between points within this state on the date this act takes effect, not previously filed by such carrier with the Michigan railroad commission.

Am. 1911, Act 139.

(71) SEC. 11. Nothing in this act shall be construed to ^{Special contract rates.} prevent concentration, commodity, transit and other special

	contract rates, but all such rates shall be open to all shippers for a like kind of traffic under similar circumstances and conditions, and shall be subject to the provisions of this act as to the printing and the filing of the same: Provided, All such rates shall be under the supervision and regulation of the commission.
Proviso.	
Freight classification.	(72) SEC. 12. The classification of freight in this state shall be uniform on all railroads.
Passenger depots.	(73) SEC. 13. (a) It shall be the duty of every railroad, unless excused therefrom by the order of the commission made after petition and hearing, to provide and maintain adequate depots and depot buildings, including facilities for checking baggage and the sale of tickets at its regular stations and at such other points as the commission shall direct, for the accommodation of passengers, and said depot buildings shall be kept clean, well-lighted and warm for the accommodation of the traveling public. All railroads shall keep and maintain adequate and suitable freight depots, buildings, switches and side tracks for the receiving, handling and delivering of freight transported or to be transported by such railroads. Upon the filing of complaint with the commission and hearing thereon as provided in section twenty-two of this act, the commission is authorized to make full inquiry in the matter of station facilities, train service, name of station, etc., at the station in question, and make such orders in regard to the building of depots, interurban railway shelters, name of station, stopping of trains or cars, necessary sidings and other track accommodations as it shall deem for the public interest and shall be just and reasonable: Provided, That no order shall be made hereunder by the commission with reference to the name of a station until the change so ordered shall have been asked for by a majority vote of the citizens of the township, incorporated village or city in which such station is located;
Freight depots.	
Proviso.	
Joint depot.	(74) (b) Where two or more railroads connect they shall, if so ordered by the commission after hearing as above provided, provide at the junction point a joint depot and suitable accommodations for passengers and merchandise. If the railroads cannot agree in providing such accommodations and for the maintenance thereof, the said commission may determine the character of the accommodations to be provided and apportion the cost thereof and the expense of the maintenance of the same between the several roads.
Control of sidetracks, etc.	(75) SEC. 14. The commission shall have control and jurisdiction over all sidetracks, spurs and branches insofar as the same are used or operated by common carriers. No change or discontinuance in the service from, to or on such sidetracks, spurs and branches or abandonment or removal of said sidetracks, spurs or branches, except sidetracks or spurs solely required for the convenient operation of its engines and trains and private industrial sidetracks, shall be

made except after ten days' notice to the commission and to the public published as aforesaid, which shall plainly state the change or discontinuance proposed to be made in such service or the sidetrack, spur or branch proposed to be abandoned or removed and the time when such change, discontinuance or abandonment or removal will go into effect; and the proposed change, discontinuance or abandonment or removal shall be shown by printing and filing new tariffs or notice thereof or by showing such change, discontinuance or abandonment or removal by issuing and filing supplements or notice in the regular manner now provided and keeping same open to public inspection: ^{Notice to public, etc.} Provided, That the commission ^{Proviso.} may allow changes upon less time than the notice herein specified or modify the requirements in this section in respect to publishing and posting of tariffs either in particular instances or by a general order applicable to special or peculiar circumstances or conditions: ^{Further proviso, postponement.} Provided further, That it shall be lawful for the said commission and it is hereby authorized, acting upon its own initiative or upon complaint, to postpone the date when such change, discontinuance or abandonment or removal shall become effective to such time not to exceed in all forty-five days as shall give the said commission opportunity to investigate the reasonableness of such proposed change, discontinuance or abandonment or removal, and it shall thereupon be lawful for such commission, and it is hereby authorized to proceed with all convenient speed ^{Authority to proceed.} with an investigation upon at least five days' notice to said common carrier, either upon its own initiative or upon complaint as to the reasonableness of said change, discontinuance or abandonment or removal, and shall follow the proceedings as near as may be and make its orders thereon either approving or refusing such change, discontinuance or abandonment or removal or prescribing the terms and conditions upon which such change, discontinuance or abandonment or removal shall be made, in the manner hereinafter provided in section twenty-two of this act, such investigation to take precedence of all matters of a different nature pending before the commission, except investigations as to change or discontinuance of rates, fares or charges or joint rates, fares or charges then pending before said commission.

Am. 1911, Act 139.

(76) SEC. 15. It shall be unlawful for any common carrier to enter into any combination, contract or agreement, express or implied, to prevent by change of time, schedule, carriage in different cars, or by other means or devices, the carriage of freight from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage or interruptions by such common carrier shall prevent the carriage of freight from being and being treated as one continuous carriage from place of shipment to the place ^{Continuous carriage.} ^{Break of bulk, etc.}

of destination, unless such break, stoppage or interruption was made in good faith for some necessary purpose and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

Special rate,
etc., unlawful.

(77) SEC. 16. If any common carrier or any agent or officer thereof shall, directly or indirectly, by any special rate, rebate, drawback, or by any means of false billing, false classification, false weighing, or by any other device whatsoever, charge, demand, collect or receive from any person, firm or corporation, a greater or less compensation for any service rendered or to be rendered by it for the transportation of persons or property or for any service in connection therewith than that prescribed in the public tariffs then in force, or established as provided herein, or than it charges, demands, collects or receives from any other person, firm or corporation for a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, or shall knowingly and willfully assist or willfully suffer and permit such greater or less compensation to be charged, demanded, collected or received, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful. It shall be unlawful for any common carrier to demand, charge, collect or receive from any person, firm or corporation a less compensation for the transportation of property or for any service rendered or to be rendered by said common carrier in consideration of said person, firm or corporation furnishing any part of the facilities incident thereto: Provided, Nothing shall be construed as prohibiting any common carrier from procuring any facilities or service incident to transportation and paying a reasonable compensation therefor.

Proviso.

M. C. R. Co. v. Wayne Circuit Judge, 156 / 459.

Preference,
etc., unlawful
to give.

(78) SEC. 17. It shall be unlawful for any common carrier, subject to the provisions of this act, to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality or any particular description of traffic in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality or any particular description of traffic to any undue or unreasonable disadvantage or prejudice in any respect whatsoever.

Rebate, etc.,
unlawful to
receive.

(79) SEC. 18. It shall be unlawful for any person, firm or corporation knowingly to accept or to receive any rebate, concession or discrimination in respect to transportation of any property wholly in this state or for any service in connection therewith, whereby any such property shall, by false billing, false classification, false weighing or any other device whatsoever, be transported at a less rate than that

named in the published tariffs in force as provided herein or whereby any service or advantage is received, other than is therein specified. Any person, firm or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for a term of not to exceed three months, or by both in the discretion of the court for each offense. Penalty.

(80) SEC. 19. If any common carrier shall do, or cause to be done, or permit to be done, any matter, act or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing required to be done by it, or by any lawful order made under the provisions of this act by the Michigan railroad commission, such common carrier shall be liable to the person, firm or corporation injured thereby in double the amount of damages sustained in consequence of such violation: Provided, That any recovery as is in this section provided shall in no manner affect a recovery by the state of the penalty prescribed for such violation. Liability of carrier.
Proviso, recovery.

(81) SEC. 20. It shall be unlawful for any officer, agent or employe of any common carrier to willfully fail or refuse to fill out and return any blank or make any report as required by this act, or to willfully fail or refuse to answer any questions therein propounded, or to knowingly or willfully give a false answer to any such question or to evade the answer to any such question where the fact inquired of is within his knowledge, or to, upon proper demand, willfully fail or refuse to exhibit to any commissioner or any commissioners, or any person authorized to examine the same, any book, paper or account of such common carrier which is in his possession or under his control. Failure to return blank, etc.

(82) SEC. 21. The commission shall charge and collect the following fees: For copies of papers and records not required to be certified or otherwise authenticated by the commission, ten cents for each folio; for certified copies of official documents and orders filed in its office, fifteen cents for each folio; for certifying a copy of any report made by a corporation to the commission, fifty cents; for each certified copy or the annual report of the commission, for certified copies of evidence and proceedings before the commission not required by this act to be furnished gratis, fifteen cents for each folio. No fees shall be charged or collected for copies of papers, records or official documents furnished to public officers for use in their official capacity, or for the annual reports of the commission in the ordinary course of distribution. All fees charged and collected by the commission shall belong to the people of the state, and shall be paid monthly, accompanied with a detailed statement thereof, Fees.

into the treasury of the state to the credit of the general fund.

Complaint
of rates, etc.

(83) SEC. 22. (a) Upon complaint in writing of any person, firm or corporation or association, or of any mercantile, agricultural or manufacturing society, or of any body politic or municipal organization, that any of the rates, fares, charges or classifications, or any joint rate or rates are in any respect unreasonable or unjustly discriminatory, or that any regulation or practice whatsoever affecting the transportation of persons or property or any service in connection therewith, is in any respect unreasonable or unjustly discriminatory, or that any service is inadequate, the commission shall notify the common carrier complained of that complaint has been made and shall furnish a copy of the said complaint with said notice, and twenty days after such notice has been given the commission may proceed to investigate the same as hereinafter provided. Before proceeding to make the investigation, the commission shall give the said common carrier and the complainants at least ten days' notice of the time and place when and where such matters will be considered and determined, and said parties shall be entitled to be heard and shall have process to enforce the attendance of witnesses. Such hearings may be continued from time to time in the discretion of the commission. If, upon such investigation, the rate or rates, joint rate or rates, fares, charges or classifications, regulation, practice or service complained of shall be found to be unreasonable, inadequate or unjustly discriminatory, the commission shall have power to and it shall determine and by order fix and order substituted therefor, such rate or rates, joint rate or rates, fares and charges, as is or are just and reasonable, and which shall be the maximum to be charged in the future, and such classifications, regulation, practice or service as is or are just, reasonable and adequate, and which shall be imposed and followed or service rendered in future in lieu of that found to be unreasonable, inadequate or unjustly discriminatory, and in either case the commission shall make an order that the common carrier cease and desist from such violation, and shall conform to the regulation and practice so prescribed, and it shall cause a certified copy of each such order to be delivered to an officer or station agent of the common carrier affected thereby, which order shall, of its own force, take effect and become operative twenty days after the service thereof. All common carriers to which the order applies shall, on or before the date when such order becomes effective, make such changes in schedules on file as shall be necessary to make the same conform to such order, and no change shall within two years thereafter be made by any such common carrier in any such rates, fares or charges, or in any such joint rate or rates, without the approval of the commission. Certified copies of all other orders of the commission

Investigation,
notice of.

When com-
mission to fix
rates, etc.-

shall be delivered to the common carriers thereby affected in like manner, and the same shall take effect within such times thereafter as the commission shall prescribe;

Mich. R. Commission v. M. C. R. Co., 159 / 580. The action in fixing rates is not legislative, but administrative or ministerial in character.—M. C. R. Co. v. Mich. R. Commission, 160 / 355. And the findings stand until modified or set aside by the courts; if attacked, the complaining party has the burden of showing by clear and satisfactory evidence that the order is unlawful or unreasonable.—Michigan Railroad Commission v. D. & M. Ry. Co., 178 / 230.

(84) (b) The commission may, when the complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at such times as it may prescribe. No complaint shall of necessity at any time be dismissed because of the absence of direct damage to the complainant; Separate hearings.

(85) (c) Whenever the commission shall believe that any rate or rates or charge or charges may be unreasonable or unjustly discriminatory, or that any service is inadequate, and that any investigation relating thereto should be made, it may, upon its own motion, investigate the same. Before making such investigation, it shall present to the common carrier a statement in writing, setting forth the rate or charge to be investigated. Thereafter, on ten days' notice to the common carrier of the time and place of such investigation, the commission may proceed to investigate such rate or charge in the same manner and make like orders in respect thereto as if such investigation had been made upon complaint; Unjust rates, charges, etc., may investigate.

(86) (d) This section shall be construed to permit any common carrier to make complaint of like effect as though made by any person, firm, corporation or association, mercantile, agricultural or manufacturing society, body politic or municipal organization; Common carrier may complain.

(87) (e) The commission may, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and the terms and conditions under which such through routes shall be operated when the common carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates: Provided, No reasonably satisfactory through route and joint rate exist. Whenever the common carrier or common carriers, in obedience to an order of the commission or otherwise, in respect to joint rates, fares or charges, shall fail to agree among themselves upon the apportionment or division thereof, the commission may after hearing make a supplemental order prescribing the just and reasonable proportion of such joint rate, fare or charge to be received by each common carrier party thereto, which order shall take effect as part of the original order. Through routes, etc. Proviso.

(88) SEC. 23. (a) Each of the commissioners, for the purposes mentioned in this act, shall have power to admin- Commissioners, powers of.

May compel
obedience.

ister oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of papers, way bills, books, accounts, documents and testimony. In case of disobedience on the part of any person or persons, or willful failure to comply with any order of the commission or any commissioner or any subpoena, or upon the refusal of any witness to testify regarding any matter upon which he may be lawfully interrogated, or to produce any books or papers in his custody or control which he shall have been required by any commissioner to produce, it shall be the duty of the circuit court or any court, or a judge thereof, upon application of a commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court, or a refusal to testify therein, and in addition said commissioner shall have the powers vested in justices of the peace and notaries public to compel witnesses to testify and to produce books and papers;

Fees, etc., of
witness.

(89) (b) Each witness who shall appear before the commission by its order shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in circuit court, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the chairman of the commission: Provided, That no witnesses subpoenaed at the instance of parties other than the commission shall be entitled to compensation from the state for attendance and travel, unless the commission shall certify that his testimony was material and necessary to the matter investigated;

Proviso.

Depositions.

(90) (c) The commission or any party may, in any investigation, cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the circuit courts;

Record of proceedings, etc.

(91) (d) A full and complete record shall be kept of all proceedings had before the commission on any investigation had under section twenty-two of this act and all testimony shall be taken down by a stenographer appointed by the commission. When any complaint is served upon the commission under the provisions of section twenty-six of this act the commission shall, before said action is reached for trial, cause the certified transcript of all proceedings had and testimony taken upon such investigation to be filed with the clerk of the circuit court of the county where the action is pending. A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, taken by the stenographer, certified by him to be a true and correct transcript of all the testimony on the investigation or of a particular witness, or of any specific part thereof, carefully compared by him with his original notes, and to be a correct

Transcript of
testimony.

statement of the evidence and proceedings had on such investigation so purporting to be taken and transcribed shall be received in evidence with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such transcript shall be furnished upon demand, free of cost, to any party to such investigations, and to all other persons on payment of a reasonable amount therefor.

(92) SEC. 24. The commission may, at any time upon application of any person or any common carrier, and upon at least ten days' notice to the parties interested, including the common carrier, and after opportunity to be heard as provided in section twenty-two, rescind, alter or amend any order fixing any rate or rates, fares, charges or classifications, or any other order made by the commission, and certified copies shall be served and take effect as herein provided for original orders. When may rescind, etc., order.

(93) SEC. 25. All rates, fares, charges, classifications and joint rates fixed by the commission and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie, lawful and reasonable until finally found otherwise in an action brought for the purpose pursuant to the provisions of section twenty-six of this act, or until changed or modified by the commission as provided for in section twenty-four of this act. Rates, etc., to be lawful.

(94) (a) It shall be unlawful for any express company operating or doing business in the state of Michigan to charge or collect a greater amount for the transportation of merchandise or other property within this state than the rates and charges set forth and contained in the schedule of rates, tariffs and classifications on file at each station and office to or from which said rates, tariffs and classifications are intended to apply; a copy of which said schedule of rates, tariffs and classifications shall be filed with the railroad commission by the issuing carrier or some duly authorized agent or representative of such carrier; Express companies.

(95) (b) It shall be unlawful for any express company operating and doing business in the state of Michigan to discriminate in favor of or against any shipper or shippers or to refuse or fail to receive and transport proffered merchandise or other property, providing such merchandise or other property is a proper subject for shipment by express and in proper condition at the time of presentation for shipment from any point where such express company shall maintain or conduct an office or station, or to or from any junction point or points where the line of such express company intersects with the line of any other express company or to or from any common terminal to any point on its own line, and the charge and compensation for the transportation of such merchandise or other property by two or more express companies shall not exceed by thirty per cent the maximum Discrimination. Proviso.

charge for the same distance on any one line, such maximum charge being determined as hereinafter prescribed;

Express
companies
to file rates.

(96) (c) All express companies operating within this state shall publish and continue in force and effect through or joint rates between all points at which offices are maintained on the line of all express companies operating within the state of Michigan: Provided, That such express companies may divide charges for transportation in such a manner as to allow participating carriers an agreed minimum proportion when the division of such charges on a mileage basis would not allow a sufficient minimum;

Proviso.

Basic
schedule.

(97) (d) The following schedule of rates shall be the present maximum basic general merchandise schedule chargeable within the state of Michigan:

One to fifty-five miles inclusive, fifty cents per one hundred pounds;

Fifty-six to seventy-five miles inclusive, fifty-five cents per one hundred pounds;

Seventy-six to eighty-five miles inclusive, sixty cents per one hundred pounds;

Eighty-six to ninety-five miles inclusive, sixty-five cents per one hundred pounds;

Ninety-six to one hundred five miles inclusive, seventy cents per one hundred pounds;

One hundred six to one hundred thirty miles inclusive, seventy-five cents per one hundred pounds;

One hundred thirty-one to one hundred fifty miles inclusive, eighty cents per one hundred pounds;

One hundred fifty-one to one hundred seventy miles inclusive, eighty-five cents per one hundred pounds;

One hundred seventy-one to one hundred ninety miles inclusive, ninety cents per one hundred pounds;

One hundred ninety-one to two hundred ten miles inclusive, one dollar per one hundred pounds;

Two hundred eleven to two hundred thirty miles inclusive, one dollar ten cents per one hundred pounds;

Two hundred thirty-one to two hundred fifty miles inclusive, one dollar twenty cents per one hundred pounds;

Two hundred fifty-one to two hundred seventy-five miles inclusive, one dollar thirty cents per one hundred pounds;

Two hundred seventy-six to three hundred miles inclusive, one dollar forty cents per one hundred pounds;

Graduated
schedule.

(98) (e) The graduated table or schedule of charges now in force relating to shipments of merchandise or other property in quantities less than one hundred pounds shall continue in operation except as hereinafter provided;

Supervi-
sion of
express
companies.

(99) (f) The Michigan railroad commission shall have control and supervision over all express companies operating within this state, and upon complaint made to it or upon its own motion and after hearing had thereon, in accordance with the rules now in force relative to hearings on com-

plaints by and against common carriers, may from time to time within its discretion change, alter and amend the maximum schedule of rates hereinbefore set forth, and may from time to time upon proper application or upon its own motion and hearing had thereon, as above prescribed, change, alter and amend any graduated table or schedule of charges on merchandise or other property transported or to be transported, the weight of which is less than one hundred pounds;

(100) (g) Any express company operating or doing business within the state of Michigan, upon receipt of any property or merchandise, providing such property or merchandise is a proper subject for shipment by express and in proper condition at time of presentation, shall unless otherwise requested by the shipper forward same via the nearest and most practical route, having in mind the frequency of train service at different junction points.

Am. 1911, Act 139.

(101) SEC. 26. (a) Any common carrier or other party in interest, being dissatisfied with any order of the commis-^{Action in chancery.}

in interest, being dissatisfied with any order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices or services, may within thirty days from the issuance of such order and notice thereof commence an action in the circuit court in chancery for the county of Ingham, against the commission as defendant to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates fixed are unlawful or unreasonable, or that any such regulation, practice or service fixed in such order is unreasonable; in which suit the commission shall be served with a subpoena and a copy of the complaint. The commission shall file its answer, and on leave of court any interested party may file an answer to said complaint. Upon the filing of the answer of the commission said action shall be at issue and stand ready for hearing upon ten days' notice by either party. All suits brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the said circuit court shall always be deemed open for the hearing thereof, and the same shall proceed, be tried and determined as other chancery suits. Any party to such suit may introduce original evidence in addition to the transcript of evidence offered to said commission, and the said circuit court in chancery is hereby given jurisdiction of such suits and empowered to affirm, vacate or set aside the order of the commission in whole or in part, and to make such other order or decree as the court shall decide to be in accordance with the facts and the law;

The power to review orders of the Michigan railroad commission is solely to determine whether the rates established are confiscatory, not to establish rates; and if they are so found, the court must refer the matter back to the commission to fix other rates.—D. & M. Ry. Co., v. Michigan Railroad Commission, 178 / 250.

Injunction. (102) (b) No injunction shall issue suspending or staying any order of the commission, except upon application to the said circuit court in chancery or to the judge thereof, notice to the commission having been given and hearing having been had thereon;

Additional evidence. (103) (c) If, upon the trial of said action, evidence shall be introduced by the complainant which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the parties in such action stipulate in writing to the contrary, shall transmit a copy of

Stay of proceedings. such evidence to the commission, and shall stay further proceedings in said action for fifteen days from the date of such transmission. Upon receipt of such evidence the commission shall consider the same, and may alter, modify, amend or rescind its order relating to such rate or rates, fares, charges, classifications, joint rate or rates, regulations, practice or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence. If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order;

When action dismissed.

Appeal. (104) (d) Either party to said action, within sixty days after service of a copy of the order or judgment of the court, may appeal to the supreme court, which appeal shall be governed by the statutes governing chancery appeals. When the appeal is taken the case shall, on the return of the papers to the supreme court, be immediately placed on the calendar of the then pending term, and shall be brought to a hearing in the same manner as other cases on the calendar, or if no term is then pending, shall take precedence of cases of a different nature except criminal cases at the next term of the supreme court;

The questions of practicability of physical connection and interchange of traffic, and of the reasonableness of service, being reviewable only by proceedings in chancery, are not open for determination in mandamus to compel the carrier to conform to the order of the railroad commission.—*Mich. R. R. Commission v. M. C. R. Co.*, 168/230. But the attempted review by bill in chancery of several unrelated orders of the commission is improper practice.—*Railway Co. v. Railroad Commission*, 171/335.

Burden of proof.

(105) (e) In all actions under this section the burden of proof shall be upon the complainant to show by clear and satisfactory evidence that the order of the commission complained of is unlawful or unreasonable, as the case may be.

(106) SEC. 27. (a) In all actions and proceedings in court arising under this act all such process shall be served and the practice and rules of evidence shall be the same as in actions in equity, except as otherwise herein provided. Every sheriff or other officer empowered to execute civil process shall execute any process issued under the provisions of this act, and shall receive such compensation therefor as may be prescribed by law for similar services; Service of process, etc.

(107) (b) No person shall be excused from testifying or from producing books and papers in any proceedings based upon or growing out of any violation of the provisions of this act on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have testified or produced any documentary evidence: Incriminating testimony. Provided, That no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying: Proviso, perjury. Provided further, The immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath, or produces evidence documentary or otherwise under oath; Further proviso, immunity.

(108) (c) Upon application of any person the commission shall furnish certified copies, under seal of the commission and signed by the commission or its secretary, of any order made by it, which shall be prima facie evidence in any court or proceedings of the facts stated therein. Orders, certified copies of.

(109) SEC. 28. (a) The commission shall have authority to inquire into the management of the business of any common carrier and shall keep itself informed as to the manner and shall have the right to obtain from any common carrier all necessary information to enable the commission to perform the duties and carry out the objects for which it is created; Authority of commission.

(110) (b) The commission shall cause to be prepared for the purposes designated in this act blanks which shall conform as nearly as practicable to the forms prescribed by the interstate commerce commission, and shall when necessary furnish such blanks to each common carrier. Any common carrier receiving from the commission any such blanks shall cause the same to be properly filled out so as to answer fully and correctly each question therein propounded, and in case it is unable to answer any question it shall give a full and sufficient reason for such failure; and said answer shall be verified under oath by the proper officer of said common carrier and returned to the commission at its office within the time fixed by the commission. The making of a false affidavit or the filing of the same shall be deemed perjury and Blanks, how prepared. False affidavit, perjury.

punishable as such under the statutes of Michigan defining perjury;

Right of commission to inspect books, etc.

(111) (c) The commission or any commissioner, or any person or persons employed by the commission for that purpose, shall, upon demand, have the right to inspect the books and papers of any common carrier, and to examine under oath any officer, agent or employe of such common carrier in relation to any matter which is the subject of complaint or investigation: Provided, That any person other than one of said commissioners who shall make such demand shall produce his authority to make such inspection under the hand of the commission or its secretary, and under the seal of said commission;

Proviso.

May order production of certain books, etc.

(112) (d) The commission may require by order or subpoena, to be served upon any common carrier in the same manner that a subpoena is served in a law action in the circuit court, the production within this state, at such time and place as it may designate, any books, papers or accounts relating to any matter which is the subject of complaint or investigation, kept by such railroad in any office or place without the state of Michigan, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof shall be made by the commission or under its direction, and such subpoena may issue to any sheriff in any county of the state. Any common carrier failing or refusing to comply with such order or subpoena within a reasonable time shall for each day it shall so fail or refuse, forfeit and pay into the state treasury a sum of not less than one hundred dollars nor more than one thousand dollars, to be recovered in an action at law brought in the name of the Michigan railroad commission.

Per diem penalty for refusal.

Copies of contracts, to whom delivered.

(113) SEC. 29. (a) Every common carrier whenever required by the commission shall, within a time to be fixed by the commission, deliver to the commission for its use, copies of all contracts which relate to the transportation of persons or property or any service in connection therewith, made or entered into by it with any other common carrier or any shipper or shippers, producers or consumers or other person or persons doing business with it;

Free tickets, etc., lists of, filed annually.

(114) (b) Every common carrier shall, on or before the first day of February, nineteen hundred ten, and annually thereafter and oftener if required by the commission, file with the commission a verified list of all free tickets, free passes and free transportation issued or given by it during the year ending the thirty-first day of December preceding, together with the full names and addresses of recipients thereof and the reason for issuing the same: Provided, That this section shall not be deemed to require the filing of a list of such free tickets, free passes and free transportation issued or given by such common carrier to its employes or their families, its officers, agents, surgeons, physicians or at-

Proviso, employes, etc.

torneys-at-law and members of their families, or the officers, agents, attorneys and employes of other common carriers and their families, except such list be specially ordered by the commission.

(115) SEC. 30. Every common carrier incorporated or doing business in this state, or which shall hereafter become incorporated or do business in this state, shall on or before the first day of October, nineteen hundred nine, and on or before the same day in each year thereafter make and transmit to the commission at its office in Lansing a full and true statement, under oath of the proper official of such corporation, of the affairs of such corporation relative to the state of Michigan for the year ending the thirtieth day of June preceding, which statement for the state of Michigan shall be similar in character and detail to the annual report, if any, required to be made by such carriers to the interstate commerce commission. The said commission shall cause to be made suitable blanks at the expense of the state, and forward the same to such common carrier, upon which to make reports required by this act. The said railroad commission may make and propound to such common carrier subject to the provisions of this act, any other or additional interrogatories relating to the management of such corporation and to the condition of its respective road and rolling stock and such other subjects as in its judgment may be necessary in order to gain full information in regard thereto. Every common carrier doing business in this state shall, when so ordered by the commission, report to the railroad commission its earnings from every source for the period designated in such order, and the proper blanks for that purpose shall be furnished by the commission.

Annual statement.

Blanks.

Earnings, report of.

(116) SEC. 31. Any freight tariffs issued by common carriers relating to interstate traffic in this state or by any common carrier relating either to interstate or to intrastate traffic wholly by water routes in this state shall be on order of the commission filed in the offices of the commission within such time as such order shall prescribe.

Freight tariffs, filing of.

(117) SEC. 32. Whenever, after hearing and investigation as provided in this act, the commission shall find that any charge, regulation or practice affecting the transportation of passengers or property, or any service in connection therewith not herein specifically designated, is unreasonable or unjustly discriminatory, it shall have the power to regulate the same as provided in section twenty-two of this act.

Power of commission.

(118) SEC. 33. Every common carrier shall, whenever an accident occurs within this state upon its line or road or on its depot grounds or yards, give such notice thereof and make such report thereof to the commission as the regulations of the commission shall require. In the event of any accident the commission, if it deem the public interests require it, shall cause an investigation to be made forthwith, which

Accidents, report of.

Investigation.

Notice.

investigation shall be held within the locality of the accident, unless for greater convenience of those concerned it shall order the investigation to be held at some other place, and said investigation may be adjourned from place to place, as may be found necessary and convenient. The commission shall seasonably notify an officer of the company of the time and place of the investigation. The cost of such investigation shall be certified by the chairman of the commission, and the same shall be audited and paid by the state in the same manner as other expenses are audited and paid, and record or file of said proceedings and evidence shall be kept by said commission.

When commission to inspect, etc., equipment, etc.

May employ expert.

May direct rate of speed, etc.

May prohibit running.

(119) SEC. 34. Whenever the commission shall have reasonable grounds to believe, either on complaint or otherwise, that any of the equipment, cars, tracks, bridges or other structures of any common carrier of this state are in a condition which renders any of them dangerous or unfit for the transportation of passengers with reasonable safety, or unreasonably endangering the employes of such carrier, it shall be its duty to inspect and examine, or cause to be inspected, examined and tested by some competent person or persons, and for that purpose it, the said commission, may employ some other person possessing especial knowledge and skill in the construction of railroads and bridges, as an expert, and if, on such examination, in its opinion any such equipment, cars, tracks, bridges or other structures be dangerous or unfit for the transportation of passengers with reasonable safety, or unreasonably endanger the employes of such carrier, it shall be its duty to give the superintendent or other executive officer of the corporation, working or operating said defective, dangerous or unfit equipment, car, track or bridge or other structure, notice of the condition thereof, and of the repairs or changes necessary to place the same in a reasonably safe condition, and of the time within which such repairs or changes shall be made. It may also order and direct the rate of speed of passing trains or cars over such dangerous or defective track, bridge or other structure, until the said repairs shall be made. If any superintendent or other executive officer aforesaid, receiving such notice or order to direct the proper subordinate officers of said corporation to run the passenger trains or cars over such defective track, bridge or other structure, at the speed so prescribed by the commission, or if any engineer, conductor or other employe of such company shall knowingly disobey such order, every such superintendent, officer, conductor or employe shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section forty-three of this act. The said commission shall have power to wholly prohibit the running of passenger trains or cars over such defective, dangerous or unfit track, bridge or other structure, or the use of such dangerous, unfit or defective equipment

or car, if said company shall neglect or without reasonable cause fail to make such repairs within the time prescribed by the commission; and such company, for each and every day that ensues thereafter, and until such changes or repairs are made, shall forfeit and pay to the state the sum of one hundred dollars. In case of the employment of an expert, as provided for in this section, the commission shall issue a certificate, which shall set forth the amount of time said expert has been employed, and the pay he is to receive therefor, which certificate shall entitle the holder thereof to receive the amount mentioned therein in the same manner as other employes of the state are paid. Forfeiture.

(120) SEC. 35. Whenever, in the opinion of the Michigan railroad commission, the safety of the public reasonably demands the stationing of a flagman to signal trains or cars where a highway or street is crossed by any railroad or street railway, or where one railroad or street railway crosses or intersects another railroad or street railway, or the building of a gate at such highway, street or railroad crossing or intersection, or street railway crossing, or the erection and maintenance of an electric alarm bell thereat, it shall direct the corporation or corporations owning or operating any such railroad, railroads, or street railway or street railways, to station a flagman or to erect and maintain a gate or electric alarm bell at such crossing as the public safety may demand, and said commission shall have jurisdiction over the subject matter of this section to the exclusion of all other boards or officers, state or municipal, and in case such flagman is directed to be stationed, or gate directed to be erected, or alarm to be installed and maintained where one such railroad crosses or intersects another, the expense thereof shall be borne jointly, in just proportions as determined by the railroad commission, by the companies owning or controlling each of said railroads or electric railways. If such flagman shall neglect to display his flag or perform such other duties as may be required of him by said commission, he shall, for every such neglect, be liable to a fine of twenty-five dollars, and shall also be liable for all damages sustained by any person by reason of such neglect, to be recovered in an action of tort: Provided, The corporation owning or operating any such railroad shall not be released from liability therefor, but shall be subject to the same liability at the option of the aggrieved party. Flagman.
Electric bells.
When flagman
liable to fine.
Proviso.

(121) SEC. 36. Authority is hereby given to the said commission, and it shall be its duty, if it shall deem it advisable, to prescribe the use of such modern generally approved system of protection for the safe operation of trains or cars at all crossings and junctions of railroads in this state, and at all crossings of draw bridges, upon which trains or cars are operated by steam, electricity or other power, such as will secure safety in the operation of trains or cars at such Crossing
protection.

Description.	crossings, junctions and draw bridges, and to apportion the cost of construction, operation and maintenance of such system of protection among the several companies in such proportion as to the commission shall seem just. The commission, having determined such form of protection, shall immediately cause a description thereof over its official signature to be delivered to an officer of the railroad affected thereby, with notice that the same must be adopted and put into practical force within a reasonable time to be fixed by the commission.
Certain orders, when not to make.	(122) SEC. 37. No order of the commission, made in pursuance of the provisions of sections thirty-five and thirty-six shall be made except upon examination, at which representatives of the common carriers affected shall be entitled to be heard, after notice.
Penalty.	(123) SEC. 38. Any common carrier that shall willfully neglect or refuse to obey or conform to any order of the commission made pursuant to either of sections thirty-five or thirty-six shall be liable to a penalty in the sum of five hundred dollars, and to a like penalty for every week thereafter until such order shall have been complied with: Pro-
Viso.	vided, That in cases in which an application for rehearing shall be made, or an action in court shall be begun and prosecuted in good faith and with diligence, the liability for the continuing penalty herein prescribed shall not apply or begin until after the decision of the commission or rehearing of the final order of the courts in such action.
Fences, inspection.	(124) SEC. 39. The railroad commission shall have power, and it shall be its duty, if it shall deem it practicable, in all cases to inspect and determine the sufficiency of all fences required by law to be constructed and maintained by railroad companies, and it may prescribe the manner of constructing and the time within which it shall be done.
Bill of lading.	(125) SEC. 40. Whenever any property is received by any common carrier subject to the provisions of this act to be transported from one place to another in the state, it shall upon demand by the shipper issue a receipt or bill of lading therefor, naming therein the classification of such freight and the rate of freight at which the same is to be carried; and no common carrier shall limit or change its common law liability by contract or otherwise as to its responsibility for the negligent act of its agents and servants with reference to property in its custody as a common carrier: Provided,
Viso, liability of carrier.	That nothing herein contained shall be so construed as to abridge or in anywise lessen the liability of any such common carrier as it now is under existing laws. All statements rendered for transportation charges shall show character of shipments, weight, rate and total charges before demanding payment.
Statements.	

In view of the proviso to this section, it was not the intention of the legislature to change the common law liability of carriers as it had existed prior to the passage of the act.—*Farnsworth v. National Express Co.*, 166 / 676.

(126) SEC. 41. This commission shall inquire into any ^{Violations.} neglect or violation of the laws of this state by any such common carrier hereinbefore defined doing business therein, or by its officers, agents or employes thereof, and shall have the power and it shall be its duty to enforce the provisions of this act as well as all other laws relating to common carriers and report all violations thereof to the attorney general. Upon the request of the commission it shall be the duty of the attorney general, or the prosecuting attorney of the proper county, to aid in any investigation, prosecution, hearing or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act and of all other laws of this state relating to common carriers, and for the punishment of all violations thereof. Any forfeiture and penalty herein ^{Attorney general, etc., to aid.} provided shall be paid to the state treasurer and shall be recovered and suit therefor shall be brought in the name of the state of Michigan in the circuit court of any county having jurisdiction of the defendants. The attorney general ^{Forfeiture, etc., when paid.} of Michigan, or any prosecuting attorney selected by the said commission in any county where such action is pending, shall be the counsel in any proceeding, investigation, hearing or trial prosecuted or defended by the commission. ^{Counsel.}

(127) SEC. 42. All claims against any common carrier ^{Claims.} for loss or damage to property from any cause, or for overcharge upon any shipments, or for any other service, if not acted upon within ninety days from the date of filing of such claim with the common carrier may be investigated by the commission in its discretion, and the result of such investigation may be embodied in a special report and the next annual report of the commission.

(128) SEC. 43. Any common carrier subject to the operation of this act, or whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent or person employed by such corporation, who alone or with any other corporation, company, person or party, shall willfully do or cause to be done, or shall willfully suffer or permit to be done any act, matter or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or who shall willfully omit or fail to do any act, matter or thing in this act required to be done, or shall cause or willfully suffer or permit any act, matter or thing so directed or required by this act to be done, not to be so done, or shall do or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, or who shall willfully disobey or knowingly fail or neglect to obey any lawful order made under the provisions of this act by the Michigan railroad commission, or shall aid and abet any such disobedience or omission or failure shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court having jurisdic- ^{Misdemeanor.}

Penalty. tion of misdemeanors, if a penalty for such offense be not elsewhere provided in this act, be subject to a fine of not to exceed five hundred dollars for each offense, in the discretion of the court, or if the convicted party be a natural person, he shall be liable to be punished by imprisonment in the county jail for a period of not to exceed three months, or both such fine and imprisonment in the discretion of the court.

Police powers
vested in com-
mission.

(129) SEC. 44. The police powers of the state over railroads, street railways, interurban railways and suburban street railways, whether operated by steam, electricity or other motive power, organized or doing business in this state, shall be and the same are hereby vested in the railroad commission, and it is hereby made the duty of said railroad commission to exercise the same in accordance with the requirements of the law.

Compliance.

(130) SEC. 45. A substantial compliance with the requirements of this act shall be sufficient to give effect to all rules, acts and regulations of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

Right of ac-
tion not
released.

(131) SEC. 46. This act shall not have the effect to release or waive any right of action by the state or by any person for any right, damage, penalty or forfeiture which may have arisen or which may hereafter arise under any law of this state, and all penalties and forfeitures accruing under this act shall be cumulative, and a suit for and recovery of one shall not be a bar to the recovery of any other penalty or damage.

No authority to preserve the status quo being conferred, a preliminary injunction issued for that purpose was void and contempt proceedings thereon unwarranted.—Fletcher Paper Co. v. D. & M. Ry. Co., 175/234.

Mandamus,
etc.

(132) SEC. 47. In addition to all the other remedies provided by this act for the prevention and punishment of any and all violations of the provisions hereof and of all orders of the commission, the commission, and likewise any person, firm or corporation interested, may compel compliance with the provisions of this act and with the orders of the commission by proceedings in mandamus, injunction or by other appropriate civil remedies.

Mandamus is the appropriate remedy to compel compliance by railroad companies with proper commission orders.—Michigan Railroad Commission v. D. & M. R. Co., 182/234, 239.

Record of
findings, etc.

(133) SEC. 48. The commission shall keep a record of all its findings, decisions, determinations and investigations under this act or under any other act prescribing its duties and powers, and shall, on January first of each year, render to the governor a full and complete report of all such findings, decisions, determinations and investigations, together with a statement of all moneys expended by it or on its

order, and of all salaries paid by or to it. It shall include in such report such recommendations as it shall desire to make on the conduct of railroad business in the state of Michigan, and such portion or abridgment of the reports of the various railroad corporations made to it as it shall deem to be of interest to the general public. Not more than fifteen hundred copies of this report shall be published, except by special authority of the board of state auditors. Recommendations.

(134) SEC. 49. All powers, duties and privileges imposed and conferred under existing laws upon the commissioner of railroads, the railroad and street crossing board, the crossing board as defined by section six thousand two hundred thirty-two of the compiled laws of eighteen hundred ninety-seven, and the board of railway consolidations as defined by section six thousand two hundred fifty-five of the compiled laws of eighteen hundred ninety-seven, and upon the Michigan railroad commission under existing laws are hereby imposed and conferred upon the commission created under the provisions of this act; and wherever in said acts or either of them the commissioner of railroads, the railroad and street crossing board, the crossing board, and the board of railway consolidations, the Michigan railroad commission, or either of said officials or boards, are named, the same shall be construed to mean and apply to and name the Michigan railroad commission created by this act: Powers, etc., transferred to commission. Provided, That Proviso. the powers and duties conferred upon the Michigan railroad commission by act three hundred twelve of the public acts of nineteen hundred seven, shall continue to be exercised by that commission until the commission provided in section one of this act has qualified and organized: Further proviso, hearing, etc. Provided further, That all hearings, investigations and complaints pending upon the organization of the commission provided for in section one of this act which shall have been begun by or before the commission organized under act three hundred twelve of the public acts of nineteen hundred seven, may be continued and orders issued therein in all respects the same as if the complaints presented, investigations made and hearings held by the commission operating under act three hundred twelve of nineteen hundred seven, had been presented to, made by and held by the commission created under section one of this act. All tariffs and schedules now on file with the Michigan railroad commission created by said act three hundred twelve shall be of the same effect as if filed with the commission created by this act. Tariffs, etc.

(135) SEC. 50. The commission shall conduct a hearing and take testimony as to the advisability of any proposed change of law relative to any matter within its jurisdiction if requested to do so by the legislature, by the senate or house committee on railroads, or by the governor, and shall report its conclusions to the officer or body at whose request Change of law.

Legislative
enactment.

the hearing was held. The commission may also recommend the enactment of such legislation, with respect to any matter within its jurisdiction, as it deems wise or necessary in the public interest, and may draft or cause to be drafted such bills or acts as it may deem necessary or proper to enact into law the legislation recommended by it.

Independent
section.

(136) SEC. 51. Each section of this act and every part of each section is hereby declared to be an independent section and part of a section, and the holding of any section or part thereof to be void and ineffective for any cause shall not be deemed to affect any other section or any part thereof.

Sec. 52 repeals Act 79 of 1873, as amended (C. L. '97, § § 5206-5234); Act 189 of 1903, as amended; Act 64 of 1875, as amended (C. L. '97, § § 5241, 5242); sec. 13 of Act 44 of 1899, as amended; Act 312 of 1907, and all other acts and parts of acts in any way contravening the provisions of this act.

SECTION II.—TRANSPORTATION OF EXPRESS PACKAGES.

An Act to regulate charges for transporting express packages; to prescribe certain regulations for forwarding the same; to prohibit the establishment of joint agencies by express companies; and to provide for the enforcement of the provisions of this act.

[Act 273, P. A. 1911.]

The People of the State of Michigan enact:

Express
rates, reg-
ulation of.

(137) SECTION 1. Hereafter it shall be unlawful for any express company, doing business in this state, to charge or receive, or cause to be charged or received for them, any greater amount than twenty-five cents for transporting and delivering any package of merchandise not exceeding five pounds in weight and ten dollars in value from any point within this state to any other point within this state. The rate provided in this section shall be in full for the collecting and delivering of said packages within the limits of any municipality where delivery service by said company is maintained.

Route for
transporta-
tion.

(138) SEC. 2. All packages received for transportation between points within this state shall be forwarded by the shortest railroad route, or railroad and boat route, between said points unless otherwise specifically directed by the shipper. In cases where packages are received by a company not operating over the shortest route, the package or packages shall be turned over by said company to the company operating over the shortest route and by the latter company shall be forwarded. No extra charge shall be made by the company first receiving such package or packages for transferring to the company operating over the shortest route between said points.

(139) SEC. 3. Hereafter it shall be unlawful without the Joint agent. specific permission of the Michigan railroad commission for any two or more express companies, doing business in this state, to maintain in any city or village a joint office or to employ the same person to act as joint agent for the said companies: Provided, That the provisions of this section shall ^{Proviso.} not apply to offices maintained at railroad stations or junction points, for the receipt and forwarding of express matter.

(140) SEC. 4. Any express company, or its agents or ^{Penalty.} representatives, that shall violate any of the provisions of this act shall be liable to a fine of one hundred dollars, for each such violation, to be recovered in an action in the name of the people of the state of Michigan.

CHAPTER III.—INCORPORATION AND CONSOLIDATION OF COMPANIES.

SECTION I.—RAILROAD, BRIDGE AND TUNNEL COMPANIES.

An Act to revise the laws providing for the incorporation of the railroad bridge and tunnel companies and to regulate the running and management and to fix the duties and liabilities of all railroad, bridge, tunnel and other corporation owning or operating any railroad, bridge or tunnel within this state. (a).

[Act 198, Laws of 1873.]

ARTICLE I.—ORGANIZATION.

The People of the State of Michigan enact:

(141) § 6223. SECTION 1. It shall be lawful for any ^{Number may} number of persons, not less than seven, to organize them- ^{incorporate.} selves into a corporation for the purpose of constructing, operating, and maintaining a railroad, railroad bridge or railroad tunnel; and for such purpose such persons shall subscribe articles of association, in which shall be set forth the ^{Articles, what to} name of the corporation, the number of years the same is to ^{set forth.} be continued, the amount of capital stock of said company, which shall not be less than four thousand dollars per mile of road constructed or proposed to be constructed with flat-bar rail, or with a gauge not exceeding three feet six inches in width, and not less than eight thousand dollars per mile of road constructed or proposed to be constructed of "T" rails with gauge exceeding three and one-half feet in width, and not less than one-half the estimated cost of any such bridge or tunnel; the number of shares of which the stock shall consist, which shall be of the amount of one hundred

(a) Title as amended by Act 266 of 1899.

When filed.

Proviso,
directors.Proviso.
Further
proviso.Resolutions,
filing of.

dollars each; the number of directors, which shall not be less than five nor more than fifteen, and their names; the places from and to which and the name of each county into or through which it is or is intended to be constructed, and its length as near as may be. Each subscriber to such articles of association shall set opposite his name his place of residence, and the number of shares of stock by him subscribed. Whenever five hundred dollars per mile of such railroad, or one-half the estimated cost of such bridge or tunnel, shall have been subscribed upon such articles of association, and five per cent of the amount thereof shall have been paid in to the directors named in such articles, in good faith, in cash, and an affidavit shall have been made and attached thereto by any two of said directors, that said amount has been subscribed, and said amount of five per cent paid in, in good faith, in cash, as before provided, such articles of association shall be filed in the office of the secretary of state, and thereupon the persons who have subscribed such articles, and all other persons who shall from time to time thereafter subscribe to or become the holders of the capital stock of said corporation, in the manner to be provided in its by-laws, shall be a body corporate, by the name specified in such articles, and shall be capable of suing and being sued, and may have a common seal, and may make and alter the same at pleasure, and be capable in law of purchasing, holding, and conveying any real and personal property whatever necessary for the construction, maintenance and operation of said railroad, railroad bridge or railroad tunnel; and for the erection of all necessary buildings, yards, and appurtenances for the use of the same: Provided, That any such company existing in whole or in part under the laws of this state, at any general or special meeting of the stockholders called and held pursuant to the provisions of this state in that behalf, may increase or decrease the number of its directors provided for in its articles of association, by a resolution to that effect: Provided, That two-thirds of the entire stock of the company shall be voted therefor: Provided further, That in no case shall the number of the directors be less than five nor more than fifteen. A copy of any resolution so passed shall be certified by the secretary of the company and shall be filed and recorded in the office of the secretary of state in like manner as provided by law for the filing and recording of articles of incorporation of railroad companies.

Am. 1911, Act 33.

Railway Co. v. Campbell, 140 / 384.

The general railroad law of 1855 was superseded by that of 1871, which was held constitutional.—Cont. Imp. Co. v. Phelps, 47 / 299. The original title was held broad enough to include union depot companies, which are "corporations owning or operating a railroad."—Union Depot Co. v. Com'r of Railroads, 118 / 340.

ACT VALID: This act is not invalid on the ground that its title provides for more than one object. Its purpose is to bring together the legislation concerning the creation and management of railroads.—T. A. A. & G. T. Ry. v. Dunlap, 47 / 464-5.

SUBSCRIBERS: Under the act of 1855 there was no distinction between the subscribers to the preliminary subscription to stock and to the articles

of association.—*Peninsular Ry. Co. v. Duncan*, 28/136. Payment of five per cent of the subscription, or something equivalent in effect, is necessary to entitle the subscriber to participate in the organization, or to make the subscription effectual; but, if the requisite amount is paid in by other subscribers, credit must be given for this first payment, so as to entitle the subscriber to all the privileges of the rest.—*Id.* 143. A stockholder cannot be compelled to receive bonds in lieu of interest of stock.—*McLaughlin v. D. & M. Ry. Co.*, 8/100.

SUBSCRIPTIONS TO STOCK: A subscription, under the act of 1855, by an original associate for the formation of a railroad company, but who did not sign the articles of association or subscribe for stock on the commissioner's books, held good.—*Peninsular Ry. Co. v. Duncan*, 28/130. Under this act and the revision of 1871, after the subscriptions made on the articles of association, no further subscription could be made, except on the commissioner's books, in the manner prescribed by law.—*Shurtz v. S. & T. R. R. Co.*, 9/269; *Carlisle v. S. V. & St. L. R. Co.*, 27/315; *N. C. M. R. Co. v. Eslow*, 40/222. But see *Parker v. N. C. M. R. Co.*, 33/23. No subscription will be valid unless made in conformity with the statute, nor will it bind the subscriber unless so made as to bind the company also.—See cases last cited; *Wright v. Irwin*, 35/349. As to conditional subscriptions see *Swartwout v. M. A. L. R. Co.*, 24/389; *D. L. & L. M. R. Co. v. Starnes*, 38/698. The subscription books are competent evidence of the amount of subscriptions to the stock and of the amount subscribed per mile.—*Monroe v. F. W., J. & S. R. Co.*, 28/272. When agreement by officers of the company to release a party upon payment of a part of his subscription will not be valid.—*Swartwout v. M. A. L. R. Co.*, 24/398.

RAILROAD AID NOTES: Voluntary subscriptions in and of a proposed railroad, when accepted and the road completed in accordance with the conditions of the promise, become valid and binding contracts.—*M. M. & C. R. Co. v. Bacon*, 33/466; *Stevens v. Corbett*, 33/458; *Wright v. Irwin*, 35/349; *Stowell v. Stowell*, 45/364; *P. O. & P. A. R. Co. v. King*, 68/111. For other cases on this subject, see *D. L. & L. M. R. Co. v. Starnes*, 38/698; *T. & A. A. R. Co. v. Johnson*, 49/148; *V. B. Div. T. & S. H. R. Co. v. Lamphear*, 54/575; *T. & A. A. Ry. Co. v. Johnson*, 55/456; *P. H. & S. W. Ry. Co. v. Potter*, 55/627; *Sickels v. Anderson*, 63/421; *Brown v. Dibble's Estate*, 65/520. Signed on Sunday.—*S. T. & H. R. Co. v. Chappell*, 56/190. When payable.—*Gardner v. Walsh*, 95/505; *Gardner v. Burch*, 101/261. For the principles that govern mutual subscriptions, see *Underwood v. Waldron*, 12/73; *Comstock v. Howd*, 15/237; *Baker v. Johnston*, 21/319; *Conrad v. LaRue*, 52/86.

MEMBERSHIP: No person can acquire rights of membership in a corporation without complying with such conditions and special methods as are prescribed in its charter. Such conditions are imperative.—*Carlisle v. S. V. & St. L. R. Co.*, 27/315. Under the former law, the subscribers to the preliminary agreement to take stock, as well as those who signed the articles of association, were deemed to be included among those who were declared to be a body corporate, etc.—*Peninsular Ry. Co. v. Duncan*, 28/130. A certificate in the ordinary form of certificates of stock but containing a promise to pay interest thereon, until the happening of a specified event, constitutes the person to whom issued a stockholder and member of the company.—*McLaughlin v. D. & M. Ry. Co.*, 8/100.

CHARTER: The general act under which a company incorporates, and its articles of association taken together, constitute its charter.—*Van Etten v. Eaton*, 19/187. A charter is a contract between the state and the corporation, and unless the right of repeal is reserved, it cannot be repealed.—*Mich. St. Bank v. Hastings*, 1 Doug., 225. And without such reserved right, or the consent of the corporation, no additional conditions or burdens can be imposed upon it.—*People v. J. & M. P. R. Co.*, 9/285.

TERMINI: The articles of association must contain the names of the places from and to which the road is to be constructed; and the right to construct it between those places is conferred upon the company when it is legally and properly organized.—*Railroad Co. v. Railroad Co.*, 72/225.

FIVE HUNDRED DOLLARS: The provision as to the amount per mile necessary to be subscribed has exclusive reference to corporations created here for the construction of roads within our own borders and was not intended to have any extra territorial operation. And the consolidation of a company in this state with a company created in Indiana, to construct a road there, cannot serve to make this regulation attach as a condition to the body owing its existence to Indiana.—*Monroe v. F. W., J. & S. R. Co.*, 28/277. And when a company has obtained sufficient subscriptions to authorize it to proceed, the fact that some of the subscriptions have been declared void will not affect it.

FIVE PER CENT PAID: It seems that, if the requisite amount has been paid in by the subscribers, it will be sufficient, even though some of the subscribers may not have paid their portion of it.—*Peninsular Ry. Co. v. Duncan*, 28/143.

AFFIDAVIT: Under the act of 1855 it was held that an affidavit, defective in that it was made by only one-third of the directors instead of one-half, as required by law, could be replaced by a new affidavit in proper form, attached to the articles, stating that the first affidavit was made by too small a number of directors through inadvertence.—*Monroe v. F. W., J. & S. R. Co.*, 28/271.

A BODY CORPORATE: A railroad company, having completed a railroad and operating it, must be deemed a corporation de facto in suits brought by it.—*Wilcox v. T. & A. A. R. Co.*, 43/584; *Swartwout v. M. A. L. R. Co.*, 24/392-3. Its corporate existence and right to exercise corporate franchises

cannot be questioned collaterally, but only in direct proceedings by the state.—*Swartwout v. M. A. L. R. Co.*, 24/394; *Wilcox v. T. & A. A. R. Co.*, 43/590; *T. & A. A. R. Co. v. Johnson*, 49/152; *Montgomery v. Merrill*, 18/343. In actions by and against a corporation, proofs of user under a special charter, or proof of a de facto corporation organized under the general law and of user of corporate franchises, is sufficient to establish corporate existence.—*Cahill v. Kalamazoo Mut. Ins. Co.*, 2 Doug., 124; *Smith v. Adrian*, 1/495; *Way v. Billings*, 2/397; *Curtis v. F. & P. M. Ry. Co.*, 32/291. And a person dealing with a corporation as such is estopped from denying its corporate existence.—*Cahill v. Kalamazoo Mut. Ins. Co.*, 2 Doug., 124; *Jhons v. People*, 25/500, 502; *M. & M. Bank v. Stone*, 38/779; *Swartwout v. M. A. L. R. Co.*, 24/389; *Monroe v. F. W., J. & S. R. Co.*, 28/271; *Parker v. N. C. M. R. Co.*, 33/23. But if there is no corporation in fact, and if there are no facts which make it legally unjust to forbid its denial, there is no estoppel.—*Doyle v. Mizner*, 42/337.

REAL ESTATE: See limitation on corporate ownership of real estate, Const. xii, 5. See *Thompson v. Waters*, 25/214, 230. A railroad corporation organized under the laws of another state and competent thereunder to hold real estate is also competent to take title to real estate in this state.—*Id.* See also note to this case in the second edition of 25 Mich.

BUSINESS OF CORPORATION: A railroad company whose purposes are strictly confined to the completion and maintaining of a railroad cannot engage in other business.—*People v. R. R. & L. E. R. R. Co.*, 12/389, 395. The authority to “work and operate” the road of a corporation does not necessarily imply that the operating is to be otherwise than under the obligations imposed upon the corporation by its charter; and grants of corporate franchises are to be construed with strictness.—*McMillan v. M. S. & N. I. R. Co.*, 16/101-2. The statement in the articles of association of a company that its road shall be operated as a “transfer road,” etc., does not exclude it from the carriage of passengers as well as freight.—*Bay City Belt Line R. Co. v. Hitchcock*, 90/539. Whatever a company can authorize its officers to do, it can ratify when done without its authority.—*McLaughlin v. D. & M. Ry. Co.*, 8/103. See *Lockhart v. Van Alstyne*, 31/76. The power of a company to bind, by a majority vote, the interests of an individual member extends only to matters legitimately within its corporate powers.—*McLaughlin v. D. & M. Ry.*, 8/100.

FOREIGN COMPANIES: As to the powers and capacities of railroad companies organized under the laws of other states, which may be exercised in this state, see *Thompson v. Waters*, 25/214.

TAXATION: See *North Park Bridge Co. v. Walker Twp.*, 143/693; *Detroit v. Manufacturers’ Railroad*, 149/531.

DISTINCTION: Between “railway” and “street railway,” see *Detroit v. Manufacturers’ Railway*, 149/530; *Ecorse Twp. v. Jackson, Ann Arbor & Detroit Railway*, 153/393.

Reorganiza-
tion on fore-
closure.

(142) § 6224. SEC. 2. In case of the foreclosure and sale of any railroad, bridge or tunnel, or part of any railroad, bridge or tunnel, under any trust deed, or mortgage given to secure the payment of bonds sold to aid in its construction and equipment, or for other cause authorized by law, it shall be competent and lawful for the parties who may become the purchasers, and such others as they may associate with themselves, to organize a corporation for the management of the same, and issue stock in the same in shares of one hundred dollars each, to represent the property in said railroad, bridge or tunnel; and such corporation, when organized, shall have the same rights, powers and privileges, as are or may be secured to the original company whose property may have been sold under and by virtue of such mortgage or trust deed. Such organization may be formed by virtue of a declaration or certificate of the purchasers at the sale under said mortgage or trust deed which shall set forth the description of the property sold, and the date of the deed under which it was sold, or of the decree of the proper court, if it shall have been sold by virtue of a decree of any court; and with such description of the parties to the deed or suit as may identify the one or the other, or both; the time of the sale, and name of the officer who sold the same; and also the purchasers and the amount paid, and the stockholders to

whom stock is to be issued, and the amount of the capital stock, and the name of the new corporation, and such other statements as may be found requisite to make definite the corporation whose property may have been sold, and the property sold, as well as the extents, and rights, and property of the new company; which said certificate or declaration shall be signed by all of the said purchasers, and shall be addressed to the secretary of state; and being filed and recorded in his office, the said corporation shall become complete, with all the powers and rights secured to railroad companies under this act, to all the provisions of which, and amendments thereto, it shall be subject, and a certified copy of the said certificate or declaration shall be prima facie evidence of the due organization of said company.

Am. 1899, Act 266.

Reorganization by purchasers on foreclosure.—Cook v. D., G. H. & M. Ry. Co., 43/349. See Wilcox v. T. & A. A. R. Co., 43/584. Reorganization authorized upon receiver's sale by order of court.—Dexter v. Ross, 85/370. Purchasers at a foreclosure sale of a railroad who organize under this section, are subject to the act of 1889 reducing the fare to 2½ cents per mile, though the mortgage was given before that act was passed.—Railroad Com'r v. G. R. & I. Ry. Co., 130/248.

(143) § 6225. SEC. 3. Any railroad company incorporated by special charter heretofore granted by the legislature of this state, may surrender such charter and incorporate under this act. Such surrender and incorporation may be effected by the passage of a resolution in that behalf by a vote of two-thirds in interest of the holders of the stock of such company, at a meeting called and held for that purpose, as hereinafter provided, and filing in the office of the secretary of state a certificate signed by the president and secretary of said company, and under its corporate seal, containing: (1) A recital of such resolution, so passed by such stockholders; (2) A declaration of such surrender and incorporation; (3) The name by which such new corporation is to be known, which may be the same as the name of such former corporation; (4) The time of existence of such new corporation; (5) The amount of its capital stock, which shall be represented by shares of one hundred dollars each; (6) The total number of shares to be issued to the stockholders of such former company, which shall not exceed the total amount of stock of said corporation then held by said stockholders; (7) The number of directors of such new corporation, which shall not be less than five nor more than fifteen and the names of the persons selected to act as such directors until the first annual meeting of said new corporation. Upon filing such declaration, such surrender and incorporation shall be deemed to be duly and completely effected; and thereupon all and singular all the railroad and other property, and all rights and interests therein, and all contracts and rights of action theretofore owned or possessed by said corporation so surrendering its charter, shall be deemed to be transferred to and vested in such new corporation, as

May surrender special charter, etc.

Certificate to be filed.

Contents of.

Effect of filing such declaration.

Provso, continuing liens, etc.

How meeting of stockholders called, etc.

Notice to be published.

owner thereof, by like title as the same were theretofore held and possessed by said former corporation; and such new corporation shall thereafter hold, possess and enjoy the same in like manner and to the same extent as said corporation so surrendering its charter might and could have done if such surrender had not been made. Provided, however, That the property so transferred to and vested in such new corporation shall continue subject to all liens existing thereon at the time of such transfer, and such new corporation shall be subject to all debts and liabilities of said corporation so surrendering its charter; and such debts and liabilities may be enforced against such new corporation to the same extent and in like manner as if the same had been originally incurred by it. A duly certified copy of such declaration, so filed in the office of the secretary of state, shall be prima facie evidence of the due incorporation of the company named therein. The meeting of the stockholders of any such company, at which the resolution hereby required shall be passed, shall be called by the board of directors of such company by a resolution passed by a majority of said board, at a meeting duly called and held in accordance with the by-laws of said company, and notice of the time when and the place where said stockholders' meeting is to be held, and the purpose thereof, shall be published at least once a week for the twelve successive weeks immediately prior to the date of said meeting, in a newspaper of general daily circulation, published in the cities of Detroit, New York and Chicago, respectively, and also in a newspaper published in the city or township where the general office of said company is situated, if not situated in the city of Detroit.

This section is practically obsolete, as all the special railroad charters have been repealed. The Michigan Southern Railway Co., had lost its special privileges under its charter before the repeal, by its consolidations with other companies.—*Smith v. L. S. & M. S. Ry. Co.*, 114/460. A special charter creating a corporation may be likened to a deed poll, the acceptance of which by the grantee raises a presumption of assent to the obligations therein imposed, whence the duty to perform those obligations is not imposed by law, but arises from express contract.—*People v. M. C. R. R. Co.*, 145/140. Upon the repeal of the special charter of the Mich. Cen. R. R. Co., pursuant to the right reserved by section 39 of the incorporating act, the company is entitled to recover "all damages sustained by reason of such repeal," including compensation for the loss of its franchise.—*M. C. R. R. Co. v. State of Michigan*, 148/151.

ARTICLE II.—CORPORATE POWERS AND DUTIES OF DIRECTORS.

Corporate powers.

Qualifications of directors, etc.

Election of president. Unsubscribed stock.

(144) § 6226. SECTION 1. All of the corporate powers of any such corporation shall be and are hereby vested in the board of directors, except as may be herein otherwise provided. No person except a stockholder shall be a director of said corporation, and no stockholder shall be entitled to vote for directors, or for any other purpose, who shall be in arrears in the payment of any assessment made on his subscription to stock. The president of said corporation shall be elected by the directors from their own number. The board of directors are hereby authorized and required to

provide by by-laws for the disposition of its unsubscribed capital stock, and may provide for the election or appointment of agents or employes of said company, and may require of them security for the faithful performance of their duties, and for the general management of the business and affairs of said company. At all elections for directors and meetings of stockholders, each stockholder shall be entitled to cast, in person or by proxy, one vote upon each share of stock owned or held by him for ten days previous to such election or meeting, and a majority of all votes cast shall be requisite to an election, or for the determination of any question voted upon. A majority of the directors shall constitute a quorum for the transaction of business by the board of directors. In case of any vacancy in the board of directors, such vacancy may be filled by the remaining directors until the next election of directors.

Employees.

Each share of stock entitled to a vote.

Quorum.

Vacancy in board, how filled.

Int. Fair & Exp. Ass'n v. Walker, 88 / 74.

(145) § 6227. SEC. 2. It shall be lawful for any company organized under this act, or under any former act for the incorporation of railroads, upon a vote of its stockholders holding two-thirds of its subscribed stock, at any meeting thereof, to alter and amend its articles of association so as to change the general route of said railway, or to extend the length of the line thereof, from either or both of its termini, or to extend any branch or branches from any point on the same, or to change the gauge of its road, or in any other respect not inconsistent with the provisions of this act, as it may determine, and upon such vote said company may make articles amendatory of their original articles, which shall be signed and certified by the president and secretary of said company, and under its corporate seal; and when the same shall be so signed, sealed, and certified and filed with the secretary of state, they shall have the same force and effect as though such alterations or amendments had been included in, and made a part of, the original articles of association. Articles of association filed in pursuance of this act, with all such subsequent alterations and amendments thereof, and the affidavits annexed thereto, shall be forthwith recorded by the secretary of state, in a book to be provided by him for that purpose at the expense of the company filing the same, and whenever any articles of association shall be filed as above provided, the company filing the same may at once proceed to construct, operate, and maintain its railroad or any section or portion thereof, and to exercise its powers and privileges, and also to assess, levy, and collect such assessments upon such stock as at that time, and from time to time, may be subscribed for such purpose as said company shall determine. A copy of any articles of association, with a copy of the affidavit annexed thereto, as well as of any articles amendatory thereof, filed in pursuance of this act

Amendments to articles of association.

Articles with amendments, etc., where recorded.

When company may proceed to exercise its franchises.

Certified copies evidence in court, etc.

or of the record thereof, certified by the secretary of state, under the seal of the state, to be a copy, shall in all courts and places be prima facie evidence of the matters therein stated, and of the genuineness of the signatures thereto, and of the incorporation of said company, as well as the articles amendatory thereof.

ASSESSMENTS: Cannot be made until the articles of association have been filed.—Peninsular Ry. Co. v. Sharp, 28 / 506; M. C. & L. M. R. Co. v. Drinker, 30 / 124; T. S. & M. R. Co. v. E. S. & St. C. R. Co., 72 / 225.

Directors,
election,
classification
and term of
office.

Annual
meetings of
stockholders.

Special
meetings.

Notice of
meetings.

Proviso.

Removal of
directors.

President and
directors,
how gov-
erned.

(146) § 6228. SEC. 3. At any meeting of stockholders for the election of directors, it shall be lawful for the stockholders to classify the directors into three classes, as near as may be, one of which classes shall hold their office one year, one for two years, and one for three years, and until their successors are respectively elected; and at all subsequent elections, directors shall be elected for three years to fill the places made vacant by the class whose term of office shall expire at that time. In case no such classification shall at any time be made, the persons elected at any such meeting shall hold their office for one year, and until their successors shall be elected. It shall be the duty of the directors to prescribe by by-law the time and place for calling and holding annual meetings of the stockholders within some county in this state, for the election of directors and the transaction of such other business as may be desired; and if the directors fail so to do, or omit to call such meeting annually, the holders and owners of one-fourth of the capital stock of the company may call the same, at which time and place there shall be a general meeting of the stockholders in person or by proxy. And a special meeting of the stockholders may be called at any time by the directors, or by the stockholders owning not less than one-fourth of the stock in value, by giving notice of such meeting as hereinafter provided. At least thirty days notice of the time and place of every general or special meeting of the stockholders shall be given in writing personally to each stockholder, or by publishing the same daily in a daily newspaper published in the city or village where the principal office of the company is situated. If there is no daily newspaper published in said city or village, such notice shall be published in a daily newspaper published in the city of Detroit or the city of Grand Rapids: Provided, That such notice, when given by the stockholders, shall state the object of such meeting. Evidence of such notice may be perpetuated by the affidavit of any person having knowledge thereof. And at any meeting of the stockholders held pursuant to this act, the stockholders representing a majority in value of the stock may remove from office any of the directors, or other officer of the company, and elect others in their stead. And the president and directors, and officers and agents of the company, in the exercise of their respective powers and duties, shall

at all times be governed by and be subject to such rules, regulations and directions as the stockholders holding a majority in value of the stock may adopt at such meeting and at every such meeting it shall be competent for any stockholder to appear and vote by proxy as well as in person. If at any meeting of the stockholders a majority in value of the stock which by the provisions of section one of article two of this act, is entitled to vote, is not represented in person or by proxy, the same shall be adjourned by such as are present from day to day, not exceeding three days, without doing any business, when, if such majority do not appear and attend, the meeting shall be dissolved.

May appear
by proxy.
Adjourn-
ments, etc.

Am. 1909, Act 267.

Notice to stockholders of meeting to consider consolidation.—Wells v. Rodgers, 60/525; Brown v. Dibble's Est., 65/523.

(147) § 6229. SEC. 4. At every annual meeting of stockholders it shall be the duty of the board of directors to exhibit a clear and full statement of the affairs of the company for the preceding year.

Directors to
make annual
report.

(148) § 6230. SEC. 5. The board of directors may, by resolution, require the subscribers to the capital stock to pay the amounts by them respectively subscribed, in such manner and in such installments as they may deem proper, and in case of neglect or refusal of any subscriber to pay any such installment, said company are hereby authorized to sue for and collect the same, and in case such neglect or refusal shall continue for sixty days after notice in writing to pay the same has been served on him personally, or by depositing the same in the postoffice, postage prepaid, properly directed to him at the postoffice nearest his usual place of residence, or in case execution issued on a judgment recovered for any such installment shall be returned unsatisfied, in whole or in part, said board of directors may declare such stock, and all previous payments or collections made thereon, forfeited, and the same shall be forfeited accordingly, and any forfeited stock shall be subject to sale by the company, as may be provided for by by-laws or resolutions of the directors.

Collection of
subscription
to capital
stock.

Failure to pay
assessments
to work
forfeiture of
stock.

COLLECTION OF STOCK SUBSCRIPTIONS: Under the law of 1855, no payment more than five per cent could be required until the whole amount specified in the articles of association had been subscribed.—Shurtz v. S. & T. R. Co., 9/269; Monroe v. F. W., J. & S. R. Co., 28/272. See Swartwout v. M. A. L. R. Co., 24/389. For the purpose of assessments the contemplated road, or each division set apart for construction, was to be considered as an entirety.—Swartwout v. M. A. L. R. Co., 24/389. No payments of subscriptions can be enforced, until the liability of the subscribers has been fixed by the compliance of the company with all the statutory requirements and a showing thereof made.—Swartwout v. M. A. L. R. Co., 24/389; Monroe v. F. W., J. & S. R. Co., 28/272. The validity of the company's organization cannot be questioned by a subscriber who has taken part in it, when called upon for payment.—Id. See Parker v. N. C. M. R. Co., 33/23. When he might contest his liability, under the act of 1855.—Shurtz v. S. & T. R. Co., 9/269; Swartwout v. M. A. L. R. Co., 24/389; Monroe v. F. W., J. & S. R. Co., 28/272; Parker v. N. C. M. R. Co., 33/23; N. C. M. R. Co. v. Eslow, 40/222. When since the revision of 1871.—M., C. & L. M. R. Co. v. Drinker, 30/124; Tuttle v. M. A. L. R. Co., 35/247. Collection of assigned stock subscriptions.—Rodgers v. Wells, 44/411; Wells v. Rodgers, 50/294. Pleadings and proofs in suits to collect.—Parker v. N. C. M. R. Co., 33/23; N. C. M. R. Co. v. Eslow, 40/222.

Stock deemed
personal
estate.

Transfer of
stock.

(149) § 6231. SEC. 6. The stock of any such company shall be deemed personal estate, and shall be transferable in the manner and under such restrictions and conditions as may be provided for by the by-laws, but any certificate of stock issued before payment in full, shall show on its face, or by indorsement, the amount paid thereon, and no share shall be transferred on the books of the company until the same shall be paid in full, without the consent of the board of directors.

STOCK CERTIFICATE: A certificate in the ordinary form, but containing a promise to pay interest thereon, until the happening of a specified event, constitutes the person to whom issued a stockholder and member of the company.—*McLaughlin v. D. & M. Ry. Co.*, 8/100. Though the issue of the certificate may have been unauthorized, it may be ratified by the company.—*Id.*

Company to
make map of
route.

Notice to be
given other
company.

(150) § 6232. SEC. 7. Every such company proceeding to construct a part of its road into or through any county named in its articles of association, or which shall have been so constructed, shall make a map of such part of the route intended to be adopted by such company, or which shall have been adopted, giving also the location of the points selected for crossing any other railroad, which shall be certified by the president and secretary of such company under its corporate seal and approved by a board consisting of the commissioner of railroads (railroad commission), attorney general and secretary of state, and filed in the office of the register of deeds of such county. If such route crosses the road of any other railroad company, said board shall give at least ten days' notice to the general manager or general superintendent of such other company when and where said board will consider the question of approving such map, and shall permit such other company, if it so desires, to be heard in opposition to such approval, and at the time of approving said map, said board may determine the place where and the manner in which said crossing shall be made, whether at grade or otherwise, and if at grade, what safeguards shall be provided by the company desiring to make such crossing, to protect against accident thereat. The said board shall approve such map within thirty days from the time it is presented to it by said company, or within the said thirty days shall file in the office of the commissioner of railroads (railroad commission) written reasons for the disapproval of said map, or any part thereof, and serve a copy of said reasons upon said company. It shall be unlawful for any corporation or person to construct any crossing of the tracks of a railroad company with the tracks of any other railroad company until after the place where and the manner in which such crossing shall be made shall have been approved by the board, as above provided, and for any violation of the provisions of this act, any such corporation or person shall be liable to a penalty of five hundred dollars and to a penalty of one hundred dollars for every ten days during

When un-
lawful to con-
struct cross-
ings.

which said crossing shall be permitted to remain in existence. The route so adopted, or any part thereof, may be changed by the company as often as found expedient before it has fully completed its road thereon: Provided, That any such change shall be approved by said board and a new map showing the new route adopted shall be made, certified, approved and filed as aforesaid: And provided further, That two members, of said board, of which the commissioner of railroads (railroad commission) shall be one, shall constitute a quorum for the transaction of business: And provided further, That the secretary of state and attorney general when serving as members of the said board, or board of consolidation, as provided by this act, shall receive five dollars per day and expenses incurred while actually engaged in such services, and said board shall also be authorized to employ a clerk, who shall receive for his services, five dollars per day and expenses, all such services of said board and clerk to be paid for by the railroad companies interested therein: And provided further, That a map shall not be necessary as a basis for condemnation proceedings affecting the property sought to be obtained for railroad purposes and situated adjacent to the main line of the petitioner's railroad.

Route may
be changed.

Proviso.

Further
proviso.

Further
proviso.

Further
proviso.

Am. 1905, Act 128.

"Michigan railroad commission."—The powers, duties and privileges imposed and conferred on the commissioner of railroads, the railroad and street crossing board, and the crossing board defined by above section are imposed and conferred on the Michigan railroad commission. See section 134, of this compilation.

Safeguards.—Mellish v. P. M. R. Co., 167/86.

MAP OF ROUTE: Must be made and filed before the company can construct its road.—T., S. & M. R. Co. v. E. S. & St. C. R. Co., 72/225. The map and survey are intended to, and must designate the line of the road by which the termination is reached, and the line or lines upon which it is proposed to enter such place, with the grounds to be occupied for its terminal facilities, and both should be selected with a view to the business and convenience of the road and the necessities of the public.—Id. The map not only must be a delineation giving a general or approximate idea of the situation of the road, but also must give such full and accurate notes and data as are necessary to furnish complete means for identifying and ascertaining the precise position of every part of the line with courses and distances throughout, so that there can be no doubt as to where any portion of it is to be found.—Convers v. G. R. & I. R. Co., 18/466. A map of a proposed railroad, on which the center line of the track is designated by a colored line, indicates with reasonable certainty the location of the line and hence the space to be occupied by the standard-gauge road proposed to be laid along the line so designated.—Bay City Belt Line R. Co. v. Hitchcock, 90/533. The question whether the map and survey is sufficient, without the aid of other maps or information, to identify the property sought to be acquired by condemnation proceedings, is a jurisdictional one to be determined by the court and is not a proper question to be submitted to the jury.—T., S. & M. R. Co. v. Campau, 83/35, citing M. & N. E. R. Co. v. Fowler, 73/217. Condemnation proceedings not invalidated by failure to prove the filing of map, where an averment to that effect in the petition is not denied in the answer.—Railway Co. v. Railway Co., 106/473. No map required to be certified and filed.—M. C. R. Co. v. Miller, 172/201.

ACTION OF BOARD: The board may disapprove of the map or any part thereof; and may decline to approve it unless adequate provisions be made for the safety of employes and travelers by rail and over the street, in case of crossings.—Union Depot Co. v. State R. Crossing Board, 81/257. When these crossings are made over a public highway, the people become the third party in interest, and it is evidently the duty of the board, and the railroad commissioner as well, to see that they are made with all the safeguards necessary for the protection of the public.—Id. 258. Mandamus will lie to compel the board to reduce its objections to writing.—W., M. & N. Ry. Co. v. Railroad Crossing Board, 119/505. And mandamus proceedings to compel official action will not abate because of the expiration of the terms of a majority of the board, but the writ may issue to their successors in office.—Id.

Alteration,
etc., of line.

(151) § 6233. SEC. 8. If at any time after the location and use of the track, bridge or tunnel, or any part thereof, of any company organized under the provisions of this act, it shall appear to the directors of said company that the line in some parts thereof may be improved, it shall be lawful for such directors from time to time to alter the line and cause a new map to be filed in the office of such register of deeds of the county in which such alteration is made, and when a new line is adopted, to take possession of the lands and property embraced in such new location that may be required for the construction and maintenance and operation of the road, bridge or tunnel on such new line and the convenient accommodations appertaining to the same, either by agreement with the owner or owners or by such proceedings as near as may be, as are authorized under the preceding provisions of this act, and use the same.

Am. 1899, Act 266.
F. & P. M. R. Co. v. Rich, 91 / 295.

General
powers.

(152) § 6234. SEC. 9. Every such corporation shall possess the general powers and be subject to the liabilities and restrictions following, that is to say:

Surveys.

First, To cause such examination and surveys of the proposed railroad, or railroad bridge or tunnel to be made as may be necessary to the selection of the most advantageous route for the road, and for such purposes by its officers, agents and servants to enter upon lands or waters of any person or company, but subject to liability for all damages which they shall do thereto: Provided, That it shall not be lawful for any such corporation by its officers, agents or servants to enter upon the land or water of any person or company to make any such examination or survey until such corporation shall have made, executed and delivered to the judge of probate of the county where such land or water lies, a bond to be approved by him, with two sufficient sureties running to the judge of probate of said county in his official name, for the use of any person interested, in the penal sum of five thousand dollars, conditioned upon the payment by such corporation of all damages sustained by any person or company on occasion of any such examination or survey. Upon the delivery of such bond to such judge of probate and its approval by him, he shall file the same in his office, and when so filed it shall be deemed a public record and may be proved in court by a certified copy thereof. Any person or company having a claim for damages arising under this section may bring suit upon said bond in any court of said county having jurisdiction over the amount claimed in damages;

Damages,
claim for.

Real estate
grants, etc.

Second, To receive, hold and take such voluntary grants and donations of real estate and other property as shall be made to it to aid in the construction, maintenance and ac-

commodation of such road or railroad bridge or tunnel, but the real estate thus received by voluntary grant shall be held and used for the purpose of such grant only;

Third, To purchase, and by voluntary grants and donations. Entry upon lands, etc. receive, take and by its officers, engineers, surveyors and agents, enter upon and take possession of, hold and use all such lands and real estate, franchises and other property as may be necessary for the construction, maintenance and accommodation of its railroad or railroad bridge or railroad tunnels, stations, depots and other accommodations; but the same shall not be appropriated until the compensation to be made therefor is agreed upon by the parties, or ascertained as herein prescribed, to be paid to the owners or deposited as hereinbefore directed, unless the consent of such owner be given therefor;

Fourth, To lay out its road not exceeding one hundred Width of road, etc. feet in width, and to lay out its bridge or tunnel and its bridge or tunnel approaches not exceeding two hundred feet in width, and to construct the same, and for the purpose of cuttings and embankments and for procuring stone, gravel or other material or for the purpose of draining its roadbed or tunnel, to take in the manner herein provided such further lands adjacent to and in the vicinity of its road or tunnel, as may be necessary for the proper construction, operation and security of its road or tunnel;

Fifth; To construct its road or bridge over, upon or across. Road, bridge or tunnel. or its railroad tunnel under any stream of water, water course, private road, street, lane, alley or highway, and across or under any plank road, railroad or canal which the route of its road or railroad bridge or railroad tunnel shall lie along or intersect; but the corporation shall restore the stream, water course, private road, street, alley, lane, highway, plank road, railroad or canal to its former state as near as may be, but shall not materially obstruct the navigation of any stream, nor obstruct any public highway or street by cars or trains for more than five minutes at any one time, and the railroad commission shall have the authority to cause the removal of switches that are so located with reference to public highways or streets that by reason of the constant switching or shunting of cars the use of the public highway or street is materially obstructed, impeded or delayed; and such corporation shall construct suitable road and street Road and street crossings. crossings for the passage of teams by fitting down planks between and on each side of the rails of such road, the top of which shall be at least one-half inch higher than the top of the rails of such road. Whenever it shall become necessary Sewers, pavements or sidewalks. to lay, build or repair any sewer, pavement or sidewalk, in or upon, or to otherwise improve any street, lane, alley or highway which shall intersect or cross the right of way of any railway company in any municipality, such railway company shall be required to pay and be assessed with such propor-

tion of the cost thereof as shall be its fair and proper proportion thereof, to be determined, assessed, spread, levied, collected and to be a lien in the same manner and proportions and with the same effect and upon the same tax or assessment roll as the costs of such improvement are ascertained for or spread, levied, collected and borne by or upon abutting property owners or upon property other than that owned or occupied by railway companies: Provided, That when any pavement or sidewalk is laid upon or across any such crossing or intersection, plank may be used between the rails and for one foot on either side of such rails. In cases of sidewalk, the railway company shall first be given the right to construct in the same manner as that right is given to individuals, and in the event of its failure so to do the municipality may cause the same to be constructed at the expense of such railway company, and the cost thereof to be collected in the usual manner as provided in the law governing the particular municipality. And in case of the construction of such railway upon any public street, lane, alley or highway, the same shall be on such terms and conditions as shall be agreed upon between the railroad company and the common council of any city, or the village board of any village, or the commissioners of highways of any township in which the same may be; but such railway shall not be constructed upon any public street, lane, alley, highway or private way until damages and compensation be made by the railroad company therefor to the owner or owners of property adjoining such street, lane, alley, highway or private way and opposite where such railroad is to be constructed, either by agreement between the railroad company and each owner or owners, or ascertain as herein prescribed for obtaining property or franchises for the purpose of its incorporation to be paid to the owner thereof or deposited as hereinafter directed;

Proviso, use of plank.

Construction of sidewalk.

Railway upon street, etc.

Compensation for damages.

Intersections, connections, etc.

Steam power, etc.

Sixth, To cross, join and unite its railroads, bridge or tunnel with any other railroad now or hereafter constructed under any law whatever at any point on its route, and upon the grounds of such other railroad now or hereafter constructed with the necessary turnouts, sidings and switches and other accommodations and conveniences in furtherance of the objects of its connections; and to make all such business arrangements as said companies may agree upon. Every company whose railroad shall be intersected by any other railroad shall unite with the owners of such other railroad in forming such intersections and connections, and grant facilities for the same as hereinafter provided;

Seventh, To take, transport, carry and convey persons and property on their said road or bridge or through such tunnel by the force and power of steam, animals or any mechanical power or by any combination of them; and to receive tolls and compensation therefor;

Eighth, To erect and maintain all necessary and convenient buildings, stations, depots, fixtures and machinery for the accommodation and use of their passengers, freight and business, and to obtain and hold all the lands necessary therefor;

Ninth, To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor; but such compensation for transporting any passenger and his or her ordinary baggage, not exceeding in weight one hundred fifty pounds, shall not exceed the following prices, viz: For a distance not exceeding five miles, three cents per mile; for all other distances

Equipment.
Fares, baggage.

Rates.

for all companies the gross earnings of whose passenger trains, as reported to the commissioner of railroads for the year nineteen hundred six equaled or exceeded the sum of one thousand two hundred dollars per mile for each mile of road operated by said company, on which regular passenger service is maintained, as hereinafter provided, two cents per mile, and for all companies whose earnings reported as aforesaid were less than one thousand two hundred dollars per mile of road operated by said company, three cents per mile:

Provided, That in the future, whenever the earnings of any company doing business in this state, as reported to the railroad commission at the close of any year, shall increase so as to equal or exceed the sum of one thousand two hundred dollars per mile of road operated by said company, then in such case said company shall thereafter, upon the notification of the railroad commission, be required to only receive as compensation for the transportation of any passenger, his or her ordinary baggage, not exceeding in weight one hundred fifty pounds, a rate of only two cents per mile as hereinbefore provided: Provided further, That in computing the passenger earnings per mile of any company the earnings and mileage of all branch roads owned, leased, controlled or occupied or that may hereafter be owned, leased, controlled or occupied by such company, exclusive of all spurs and branches over which such company does not operate each way daily, except Sunday, at least one passenger train, or mixed train having at least two passenger coaches or one passenger coach and baggage car, shall be included in the computation, and the rate of fare shall be the same on all lines owned, leased, controlled or occupied by such company: Provided further, That no company shall charge, demand or receive any greater compensation per mile for transportation of children of the age of twelve years or under than one-half the rate herein prescribed: Provided further, That any railroad company may charge a minimum fare of five cents for each passenger transported over its road, whenever cars are propelled or moved by motive power other than steam: Provided further, That any railroad company which shall, within thirty

Proviso, two cents per mile.

Further proviso, computation of earnings.

Further proviso, children.

Further proviso, non-compliance.

days after notification by the railroad commission, fail to comply with the provisions of subdivision nine of this section, shall immediately after such failure become liable to the people of the state of Michigan in a penalty of five hundred dollars per day for each and every secular day during the pendency of such failure, which said penalty shall be collected in an action to be brought by the railroad commission in any court of competent jurisdiction within this state, and which said penalty when collected shall be paid into the state treasury and credited to the primary school fund. The penalty in this section mentioned shall be supplemental to and shall not be deemed to supersede any extraordinary remedy by mandamus or otherwise authorized by law to be instituted by the state, the railroad commission or any state officer or board to compel compliance with section one of this act. The provisions of this section shall apply to all railroad companies operating lines of railroad in this state, whether such companies are organized under the general railroad law or under any special charter from the state legislature.

Application
of section.

Am. 1909, Act 288; 1911, Act 276; 1915, Act 287.

SECOND: As to "voluntary subscriptions," see note, "Railroad aid notes" to section 141 ante. In a suit to collect such a subscription, the declaration must aver the acceptance and reliance of the company upon it.—*N. C. M. R. v. Eslow*, 40/222. As to the extent of performance required on the part of the company, see *Stowell v. Stowell*, 45/364; *D. L. & L. M. R. Co. v. Starnes*, 38/698. Where subscription is to be paid a certain length of time after the road is "completed," the purpose of such condition is accomplished when the road is put in condition for regular business.—*Tower v. D. L. & L. M. R. Co.*, 34/338-9. Construction of the term "regular station" in a railroad aid note.—*P. H. & N. W. Ry. Co. v. Richards*, 90/580. Under this subdivision a railroad company can take land by voluntary grant and donation and not by dedication.—*Railway Co. v. Marble*, 112/4. A parol license to enter on land and construct a railroad is revocable at will.—*Id.*

THIRD: Where land is deeded to a corporation that is limited as to the purposes for which it may take and hold real property, without any specification of purpose, it will be presumed, in the absence of evidence to the contrary, to have been deeded for legitimate purposes.—*Thompson v. Waters*, 25/214, citing *Regent of University v. Detroit Y. M. Soc.*, 12/138. A conveyance of one tenant in common of his interest passes no fee and confers no right as to the other tenants, yet operates as a release of his damages.—*Draper v. Williams*, 2/536. See *T. & A., etc., R. Co. v. Dunlap*, 47/456. A deed of fifty feet of land on each side of a line to "be hereafter established" across a certain described tract, does not operate as a present conveyance of any land, but will operate as such conveyance upon the location of the line.—*D. H. & I. R. Co. v. Forbes*, 30/165. If a director, who has received funds to purchase lands for the company takes the conveyance in his own name without the company's consent, the transaction will be fraudulent, and he will be deemed to hold the lands in trust for the company.—*M. A. L. Ry. Co. v. Mellen*, 44/321. An agreement for a railroad right of way cannot rest partly in writing and partly in parol, and if so made the written contract will supersede the oral and become the criterion by which to determine the rights of the parties.—*Waldron v. T., A. A. & G. T. Ry.*, 55/425. All grants must be construed reasonably and in the light of surrounding circumstances.—*Newaygo Mfg. Co. v. C. & W. M. Ry. Co.*, 64/122; *McConnell v. Rathbun*, 46/33. Extinguishment of right of way by adverse possession.—*Matthews v. Railway Co.*, 110/170. A parol license to a railroad company to enter upon land and construct its road is revocable at the will of the owner.—*Wood v. M. A. L. R. Co.*, 90/334; *Railway Co. v. Marble*, 112/4. Trespass and statute of limitations.—*Wood v. M. A. L. R. Co.*, 90/212. Title to railroad aid grant lands, as between state and company.—*State v. F. & P. M. R. Co.*, 89/481.

FOURTH: This subdivision authorizes the condemnation of gravel beds; and the fact that the company already owns extensive gravel beds and has sold a number of car loads, is not conclusive against its right to condemn but may be considered by the jury in determining the necessity of the taking.—*S., T. & H. R. Co. v. Bordner*, 108/236.

FIFTH: Liability of railroad company for damages to private property in the use of streets and highways for railroad purposes.—*G. R. & I. R. Co. v. Heisel*, 38/62. Damages to property in the vicinity when a company occupies a street with its railroad.—*People v. L. S. & M. S. Ry. Co.*, 52/277; *C. & G. T. Ry. Co. v. Hough*, 61/507. A railroad company crossing a public highway is bound to keep the approaches to the crossing in a safe condi-

tion for travelers on the highway.—*Maltby v. C. & W. M. Ry. Co.*, 52/108. Liability of company for damages to persons using such crossing.—*Id.* *Patterson v. D. L. & N. R. Co.*, 56/172; *Jeffrey v. D. L. & N. R. Co.*, 108/221. It is the duty of the company to restore the highway to its former state, as nearly as may be, and to construct suitable crossings for teams; and this obligation continues until its proper discharge.—*Thayer v. F. & P. M. R. Co.*, 93/154; *Tobias v. M. C. R. R. Co.*, 103/330; *Gage v. P. O. & N. R. Co.*, 105/335. The right to use a public highway, even if it be in a dangerous condition, cannot be abridged by the act of putting it in such condition or by neglect to repair it.—*Maltby v. C. & W. M. Ry. Co.*, 52/108; *Thayer v. F. & P. M. Ry. Co.*, 93/155. The company is the owner of its right of way and has the right of passage and use in the ordinary manner of its tracks at crossings. So has the public a right of way and passage across the tracks, to be used and enjoyed in the usual manner. These rights are in a sense reciprocal, and must be exercised by each with a due regard to the rights of the other.—*Kelly v. M. C. R. Co.*, 65/186. Obstruction of crossings by company with its cars.—*Young v. D., G. H. & M. Ry. Co.*, 56/430; *Peterson v. C. & W. M. Ry. Co.*, 64/621; *Guggenheim v. L. S. & M. S. Ry. Co.*, 66/150; and see also *Gilbert v. F. & P. M. Ry. Co.*, 51/488; *Selleck v. L. S. & M. S. Ry. Co.*, 59/195; *Kelly v. M. C. R. Co.*, 65/186. A company is not obliged to plank between its rails to accommodate persons who wish to cut "across lots" to the depot.—*O'Neil v. D. S. S. & A. Ry. Co.*, 101/441. But where the company, acting under a notification from the common council, constructs a sidewalk across its right of way, and for years assumes to keep it in repair, it becomes its duty to keep it reasonably safe for public travel.—*Retan v. L. S. & M. S. Ry. Co.*, 94/146, 151, citing *Steward v. C. & W. M. Ry. Co.*, 89/315. See *Fehrich v. M. C. R. Co.*, 87/606. A company cannot fence in its right of way across a highway, unless the latter has been actually abandoned.—*McNamara v. M. St. P. & S. S. M. Ry. Co.*, 95/545. Private interest in navigable stream and land upon it; obstruction, etc.—*Potter v. I. & L. M. Ry. Co.*, 95/389. The owner of property abutting on the opposite side of a street from that in which a road is to be laid is entitled to compensation.—*Marquette, etc., Ry. Co. v. Longyear*, 133/94. And the owner of land abutting on a street used by a railroad company under a mere license from the city is entitled to damages accruing from year to year.—*Hoffman v. Railroad Co.*, 143/316. An engine within the limits of the street, but not on the crossing, is not, as a matter of law, an obstruction of the street.—*Hinchman v. P. M. Ry. Co.*, 136/341. An abutter on a highway which is excluded by the description contained in his deed can recover no damages on account of any interest in the soil of the highway, in case of the construction of a railroad on the highway.—*Keyser v. L. S. & M. S. R. Co.*, 142/143. Only such damages can be recovered as are reasonably permanent in their character and arise from the proper operation of the railroad in the usual way, not including damages resulting in inconvenience and annoyance, such as blowing whistles, standing cars, etc.—*Id.* A railroad company has not the right to occupy with its yards, as distinguished from its main track and necessary sidings, any portion of a public highway without consent of the highway commissioner.—*Com'r of Ecorse Twp. v. Wabash R. R. Co.*, 148/436. By the term "private way" is meant all private ways, however created, and not merely roads laid out as private roads under statutory provisions.—*Detroit Leather Specialty Co. v. M. C. R. R. Co.*, 149/588. Necessity of compensation for private ways.—*Id.* A railroad company, organized under the general railroad act, operating under franchises granted by a city to street railroad companies whose rights it has acquired, carries freight without authority, charges excessive fares, etc., are not ground for the forfeiture of the franchises, but furnish occasion for the regulation of the business done by the corporation.—*Monroe City v. Toledo & Monroe Ry.*, 151/473. The provision requiring payment of compensation to adjacent owners before constructing railways on streets, etc., has no application to the erection of a station.—*D. & M. Ry. Co. v. Sioux City Seed & Nursery Co.*, 168/668.

SEVENTH: Public policy requires that common carriers should exercise the same extreme care in carrying persons free as in carrying them for hire.—*F. & P. M. Ry. Co. v. Weir*, 37/111. (See note to this case in 37th Mich. reprint, p. 116.) Damages for loss of baggage carried free cannot be recovered in assumpsit; but an action of tort lies for negligent loss.—*Id.*; *Bay City B. L. R. Co. v. Hitchcock*, 90/538. As to liability for baggage, see *Taffrey v. Grummond*, 74/186.

EIGHTH: The traveling community are not bound to govern their behavior at stations by the whims of an obstinate station-house keeper, or to leave the room whenever he thinks proper to drive them out. They are invited by the railroad company and are entitled to remain there so long as they have occasion to do so and commit no offense against the good order of the place and the reasonable regulations made to govern it.—*People v. McKay*, 46/440-1.

NINTH: The right to be carried, by a common carrier, is a right superior to the rules and regulations of the company and cannot be affected by them; but the accommodation of passengers, while being transported is subject to such rules and regulations as the carrier may see fit to make, provided that they be reasonable.—*Day v. Owen*, 5/525-6. All rules and regulations must be reasonable; and must be of a permanent nature, and not made for a particular occasion or emergency.—*Id.* 526; *Frederick M. H. & O. R. Co.*, 37/343. See *Blumens v. G. R. & I. R. Co.*, 101/328. An increased sum may be charged for passage when fare is paid on the train, provided that the sum collected does not exceed the statutory rate.—*Zagelmeyer v. C. S. & M. R. Co.*, 102/214. It is for the legislature and not for the courts to

determine what are reasonable maximum rates of charges for transportation of passengers, and the amendatory act of 1889, grading the rates of passenger fares, is constitutional.—*Wellman v. C. & G. T. Ry. Co.*, 83/592. But see 143 U. S. 339. The right of the legislature to fix the maximum rate for passenger fares has been exercised ever since the first general enactment as to railroads in 1855.—*Id.* 597. The provision requiring the sale of family mileage books is constitutional.—*Smith v. Railway Co.*, 114/460. Lawful charge.—*Chamberlain v. L. S. & M. S. Ry. Co.*, 122/477. States may regulate fares of railroads within their territory, based upon domestic commerce.—*Com'r of Railroads v. Wabash R. Co.*, 123/669. And in determining domestic fares, it is competent to include receipts from the mail and express service.—*Com'r of Railroads v. Wabash R. Co.*, 123/669. And also the amount of interstate fares earned by that portion of the road lying within the state.—*Com'r of Railroads v. Wabash R. Co.*, 126/113. Act No. 90 of 1891, amendatory of this section and providing for family mileage books, cannot be considered an amendment of the special charter of the Michigan Central Railroad Co.—*Pingree v. M. C. R. Co.*, 118/314. A railroad organized in 1896, under the general railroad law, is bound by the act reducing the rate of passenger fare to 2½ cents a mile, though such rate is unreasonable and inadequate.—*Railroad Com'r v. G. R. & I. Ry. Co.*, 130/248. The baggage contemplated in this subdivision is such articles as are necessary for the passenger's personal convenience; but the company is responsible for merchandise carried as baggage with its knowledge.—*Amory v. Wabash R. Co.*, 130/404. And it applies only to baggage of bona fide passengers who take passage on the train.—*Marshall v. Railroad Co.*, 126/45. Whether a street railway company is bound to accept as a passenger a blind man, unaccompanied, depends on his capacity to travel alone and care for himself.—*Wilson v. D. U. Ry.*, 167/107. A railroad corporation has the right to impose such restrictions upon liability to passengers riding on a branch line on its logging trains as it may see fit; general rules in use for the operation and maintenance of trains on the main line being impracticable.—*Van Auken v. M. C. R. Co.*, 182/331.

Corporation to furnish accommodations for passengers and property.

And transport them impartially.

Penalty.

Proviso, explosive freight.

Refusal to transport passengers or property, etc.

(153) § 6235. SEC. 10. Every such corporation shall furnish sufficient accommodation for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting, and the junctions of other railroads, and at siding and at stopping places established for discharging and receiving way passengers and freight; and shall take, transport, and discharge such passengers and property at, from, and to such places, on the due payment of toll, freight, or fare, legally authorized therefor; and every such corporation shall transport merchandise, wood, lumber, and other property, and persons from the various stations upon said road, without partiality or favor, when not otherwise directed by the owner of said property, and with all practicable dispatch, and in the order in which such freight and property shall have been received, under a penalty for each violation of this provision, of one hundred dollars, to be recovered by the party aggrieved, in an action of debt against such corporation: Provided, That perishable or explosive freight and property shall have the preference over all other classes of merchandise. In case of the refusal by such corporation or agents so to take and transport any such passenger or property, as aforesaid, or to deliver the same, or either of them, without a legal or just excuse for such default, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit, or the penalty prescribed in this section, at the election of the party aggrieved.

Foley v. C. & N. Ry., 48/627; *Bay City B. L. R. v. Hitchcock*, 90/538. NOT STOPPING AT STATION: Where a company sold a ticket to a flag station and return, the company was held liable for not stopping its train at the latter station to take on the passenger for the return trip, when the

customary signal was given.—Freeman v. D. & M. R. Co., 65 / 577. Just and legal excuse for not stopping at station.—Reed v. D. S. S. & A. Ry. Co., 100 / 507. What is not a "just and legal excuse."—Hoyt v. Railroad Co., 112 / 638. Carrying passengers beyond station.—Moss v. D. & M. Ry. Co., 182 / 40.

PASSENGER ON FREIGHT TRAIN: Cannot insist upon the same equipment as is usual to provide on passenger trains.—Moore v. S. T. & P. H. Ry. Co., 115 / 103. See *Stoody v. Railway Co.*, 124 / 420. Risks assumed by.—Frohriep v. Railway Co., 131 / 459. Railroad companies have the right to prescribe the conditions on which passengers may ride on freight trains.—Greenfield v. Railway Co., 133 / 557.

PENALTY FOR DEFAULT: Cannot be recovered by another common carrier, to whom property was consigned to be carried to its destination.—Crosby v. P. M. R. Co., 131 / 288. When company liable for failure to maintain train schedule.—Van Camp v. M. C. R. Co., 137 / 468. A carrier is not liable for failure to transport a passenger where the train for which the ticket was sold had been discontinued and proper notice given, and the selling of a ticket for it was the error of the local agent.—Geer v. M. C. R. Co., 142 / 511. A working time-table, issued for employes alone, is not for the information of the public.—Id.

(154) § 6236. SEC. 11. A check shall be affixed to every parcel of baggage when taken for transportation, by the agent or servant of such corporation, if there is a handle, loop, or fixture so that the same can be attached upon the parcel or baggage so offered for transportation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and if such check be refused on demand, the corporation shall pay to such passenger the sum of ten dollars, to be recovered in a civil action; and further, no fare or toll shall be collected or received from such passenger; and if such passenger shall have paid his fare, the same shall be refunded by the company; and on producing said check, if his baggage shall not be delivered to him, he may recover the value of such baggage. Baggage checks.

For bicycles as baggage, see sections 232, 233 *infra*. For what is usually considered baggage in the railroad laws, see *Amory v. Wabash R. Co.*, 130 / 404, in note to subd. 9, section 152, *ante*.

(155) § 6237. SEC. 12. All railroad companies shall keep their ticket offices open for the sale of tickets at least twenty minutes immediately preceding the departure of all passenger trains from every regular passenger station from which any such passenger trains are to start from or stop at, between the hours of seven o'clock in the morning and eleven o'clock in the evening; and the conductors of all such passenger trains shall announce, or cause to be announced, the name of the station in each passenger car of every such train, twice inside each passenger car of every such train, the door of said car being closed at the time of such announcement, within a reasonable time before the arrival of any passenger train at every station at which said train from notice given is to stop. At junctions, crossings, and points where trains leave in different directions, at or near the same time, the conductor of each train shall announce, or cause to be announced, distinctly, in each passenger car of his train, before starting, the direction in which his train is to go. For each violation of the provisions of this section, the railroad company whose employes do not comply with the provisions of Ticket office, when to be open.
Announcement of stations, manner of.
Penalty for failure.

this section in every respect, shall forfeit the sum of one hundred dollars for each violation of the same.

Similar provisions were enacted in Act No. 188 of 1871, which were superseded by this section in 1873.

Bay City B. L. R. Co. v. Hitchcock, 90 / 533.

TICKETS: Where unconditional and unrestricted tickets are sold for a journey over several connecting roads, a ticket for each road, the purchaser is not limited to their use for a continuous, uninterrupted journey, but when the journey on one road is ended, he may resume it on the other at his pleasure. The purchaser may infer an agency on the part of the seller and may treat the tickets as what they purport it to be—separate vouchers for distinct journeys over the several roads, whether they are printed on the same slip of paper or are separate tickets.—*Brook v. G. T. Ry. Co.*, 15 / 337-8. The passenger, when called upon by the conductor must produce and show his ticket as the evidence of his right to the seat he claims.—*Frederick v. M. H. & O. R. R. Co.*, 37 / 346. The rule requiring the production of the ticket as evidence of the right to ride is reasonable and well known to the traveling public.—*Van Dusan v. G. T. Ry. Co.*, 97 / 442. Ejection of passenger without opportunity to produce his ticket.—*Ferguson v. M. C. R. Co.*, 98 / 533. See notes to section 205 infra. See, also, *White v. G. R. & I. R. Co.*, 107 / 681. Coupon tickets.—*Vining v. Railway Co.*, 122 / 248. Ticket mistakenly dated.—*Humphrey v. M. U. Rys. Co.*, 166 / 645.

NAME OF STATION: It is the duty of the conductor or brakeman on a passenger train to call out the station, but not to awaken passengers. A passenger must keep awake if he wishes to alight.—*Nichols v. C. & W. M. Ry. Co.*, 90 / 207-8.

TICKET AGENT: Authority of, to make contracts of carriage.—*Hayes v. Wabash R. Co.*, 163 / 174.

Sale of un-
claimed bag-
gage, etc.

Notice of sale.

Expense of
advertising a
lien on the
property.

(156) § 6238. SEC. 13. Every company which shall have unclaimed freight, not perishable, or unclaimed baggage, in its possession for a period of one year or more, or which shall have in its possession or upon its tracks, for the period of three months, freight, baggage, cars or other property, which the owner thereof declines to accept and remove, may sell the same at public auction, and out of the proceeds may retain the charge of transportation and storage thereof and the expense of advertising and sale thereof. Notice of such sale shall be given to the consignor and consignee, either by personal service or by mailing the same, addressed to the consignor at the postoffice of the place where the articles were delivered to the company, and addressed to the consignee at the postoffice of the place to which the goods or property were to be carried, and shall be published at least once in each week for four successive weeks in a newspaper published in the city, township or village in which the general offices of such company are located, if the general offices of such company are located in this state; if not so located, then such notice shall be published in some newspaper published in a principal city or village in this state, located on the line of such railroad; and in all such cases such sale shall take place in this state, which notice shall specify the time and place of such sale, and also the name of the consignee of such freight or baggage, if known, and a general description thereof, and in the case of freight or baggage, the name of the station or depot to which said freight or baggage is consigned; and the expense of such advertising shall be a lien on such freight or baggage, car or other property, in a suitable proportion, according to the value of each

article, package or parcel, if more than one. In case such unclaimed freight or baggage shall be in its nature perishable, then the same may be sold as soon as may be, after giving notice of such sale, as the nature of the case will permit, in the city, township or village where the same may be. Such company shall make a record of the balance of the proceeds of the sale, if any, of the freight or baggage owned by or consigned to each person as near as can be ascertained, and at any time within two years thereafter shall refund any surplus so retained to the owner of such freight or baggage, his heirs, executors, administrators or assigns, on satisfactory proof of such ownership.

In case of perishable property, etc.

Record, etc.

(157) § 6239. SEC. 14. Any railroad company organized under this act, receiving freight or live-stock for transportation, shall be entitled to the rights and be subject to the liabilities of common carriers, except as herein otherwise provided; but no such company shall be suffered to lessen or abridge its common-law liability as a common carrier, unless by an agreement to be signed by both parties thereto.

Rights and liabilities as common carriers.

Am. 1907, Act 61.

ROADS UNDER SPECIAL CHARTERS: These roads are now incorporated under the general law, their special charters having been repealed in 1900. *M. C. R. R. Co.*—Under its charter, the liability of the Michigan Central Railroad Co. as a common carrier ceased and its liability was only that of a warehouseman, when property transported by it had been received in its warehouse and was ready for delivery.—*M. C. R. Co. v. Hale*, 6/243. And it had the same power to limit its common law liability as a common carrier that any other carrier had.—*Id.*, overruling *M. C. R. Co. v. Ward*, 2/538. And the liability as warehouseman was the same, whether the property was awaiting delivery to the final or to an intermediate consignee for further transportation.—*M. C. R. Co. v. Ward*, 2/538; *M. C. R. Co. v. Lantz*, 32/502. But its liability as common carrier did not cease while wheat contracted to be delivered "on board" was lying in its warehouse awaiting delivery on board.—*Moore v. M. C. R. Co.*, 3/23. Under the obligations of the charter of the Michigan Southern Railroad Co. it was not relieved of its liability as a common carrier by a want of facilities for transportation.—*M. S. & N. I. R. Co. v. Shurtz*, 7/519. But it was bound only to provide means to meet the ordinary exigencies of the business of their road and was not obliged to meet sudden and unavoidable exigencies.—*M. S. & N. I. R. Co. v. McDonough*, 21/210. Neither the *M. S. R. R. Co.*, by its charter, nor the consolidated company, was required to be a common carrier of live stock.—*Id.*, 165.

COMPANIES OF OTHER STATES: As to a company organized under the laws of another state, it will not be assumed that it is a common carrier without any showing to that effect, for persons do not, at the common law, necessarily become common carriers by receiving and transporting goods.—*Gordon v. Ward*, 16/360. See *M. S. & N. I. R. Co. v. Perkins*, 25/329.

COMMON CARRIERS: In the absence of any special contract, or local custom, or usage of particular trades governing or controlling the action of parties, it is incumbent upon a common carrier, by the rules of the common law, to deliver the goods intrusted to his care to the consignee personally, and, until such delivery, he does not discharge himself from the obligations and duties the law imposes upon him.—*M. C. R. Co. v. Ward*, 2/540. Carriers of freight are liable, whether careful or not, for any act or damage not caused by the act of God or of the public enemy. Their liability, therefore, does not arise from negligence or want of care; it arises from their failure to make an absolutely safe carriage and delivery, which they insure by their undertaking.—*G. R. & I. R. Co. v. Huntley*, 38/546. See also *M. C. R. Co. v. Hale*, 6/253; *McMillan v. M. S. & N. I. R. Co.*, 16/79. The common law liability of common carriers is also considered in *M. S. & N. I. R. Co. v. McDonough*, 21/165; *L. S. & M. S. R. Co. v. Perkins*, 25/329; *Bonfiglio v. Railway Co.*, 125/476. A railroad company may be required, at the option of the sender, to carry goods under its common law liability, as insurer of delivery.—*McMillan v. M. S. & N. I. R. Co.*, 16/79. A company is obliged to receive and carry goods if payment of charges is made in advance.—*Fitch v. Newberry*, 1 Doug. 1. Parties do not necessarily become common carriers by receiving and transporting goods.—*Gordon v. Ward*, 16/360; *M. S. & N. I. R. Co. v. Perkins*, 25/329. To make a company liable as a common carrier, there must be a concurrence of all those conditions from which the law raises the duty and obligations.—*M. S. & N. I. R. Co. v. McDonough*,

21/165. And where the property is carried without charge, the company is liable as a gratuitous bailee only.—*F. & P. M. Ry. Co. v. Weir*, 37/111. But a railway company which receives property for gratuitous carriage assumes, like any other gratuitous bailee, certain duties in respect to it and will be liable for a failure to perform those duties. The gratuitous bailee must not be reckless; he must observe such care as may reasonably be required of him under the circumstances. But it is not the same care as is required of the bailee for profit.—*Id.* 113. The doctrine generally accepted by the American courts is, that where a carrier receives goods marked for a particular destination beyond its line and does not expressly undertake to deliver them at the point designated, the implied contract is only to transport over its own line and forward from its terminus.—*McMillan v. M. S. & N. I. R. Co.*, 16/119-20; *D. & B. C. Ry. Co. v. McKenzie*, 43/609; *Rickerson v. G. R. & I. R. Co.*, 67/117; *McEacheran v. M. C. R. R. Co.*, 101/266. Railroad companies are not, by the common law, common carriers of live stock, and can make themselves such only by assuming to convey it as common carriers.—*L. S. & M. S. R. Co. v. Perkins*, 25/329; *M. S. & N. I. R. Co. v. McDonough*, 21/165; *McKenzie v. M. C. R. Co.*, 137/112. See *Am. Mer. U. Express Co. v. Phillips*, 29/515; *Heller v. C. & G. T. Ry. Co.*, 109/53. And hence a railroad is not bound to receive such property for transportation, except under restricted liability.—*M. S. & N. I. R. Co. v. McDonough*, 21/165. And since this section has reference only to the abridging of the common law liability, it has no application to a contract restricting liability in case of live stock.—*Id.* 200. Claim for damage to stock.—*Soper v. Railroad Co.*, 113/443. Duty to feed and water.—*Hengstler v. Railroad Co.*, 125/530. Contract for carriage of stock construed.—*Weaver v. A. A. R. Co.*, 139/590. Common carriers by railroad or boat are excused from a personal delivery of goods carried by them; but in lieu of delivery are required to notify the consignee and their liability continues until the consignee has had a reasonable time to remove the property.—*M. C. R. R. Co. v. Ward*, 2/538; *McMillan v. M. S. & N. I. R. Co.*, 16/103, 104-5; *Walters v. United Railway Co.*, 139/303. The seizure by a sheriff, upon regular process, of property in the hands of a common carrier for shipment, exonerates it from liability for non-delivery.—*Pingree v. D. L. & N. R. Co.*, 66/143. The carrier's liability continues until the consignee has reasonable time and opportunity to remove his goods after notice of their arrival.—*Buckley v. G. W. Ry. Co.*, 18/121. See *McMillan v. M. S. & N. I. R. Co.*, 16/79; *King v. M. S. & N. I. R. Co.*, 16/132. See common carrier's liability considered in *Smith v. Am. Ex. Co.*, 108/572. A railroad company becomes immediately liable as a common carrier, when goods properly marked for shipment are placed inside its freight depot for immediate transportation.—*Meloche v. C. M. & St. P. Ry. Co.*, 116/69.

LIMITATION OF LIABILITY: A common carrier has no right to refuse goods offered for carriage at the proper time and place, on tender of the usual and reasonable compensation, unless the owner will consent to his receiving them under a reduced liability; and the owner can insist on his receiving the goods under all the risks and responsibilities which the law annexes to his employment.—*McMillan v. M. S. & N. I. R. Co.*, 16/111. But the common law liability may be limited by contract with the consignor.—*M. C. R. R. Co. v. Hale*, 6/243, overruling *M. C. R. R. Co. v. Ward*, 2/538. See *Smith v. Am. Ex. Co.*, 108/572. Prior to the act of Mar. 27, 1867 (Sec. 427 *infra*), such contract might be express or implied.—*McMillan v. M. S. & N. I. R. Co.*, 16/79; *Buckley v. G. W. Ry. Co.*, 18/121; *L. S. & M. S. v. Perkins*, 25/329. But a mere notice to the shipper or any act of the carrier alone, not assented to by the shipper, would not limit liability.—*M. C. R. Co. v. Hale*, 6/243; *McMillan v. M. S. & N. I. R. Co.*, 16/79. See further, *Heffron v. M. S. & N. I. R. Co.*, 16/131; *King v. M. S. & N. I. R. Co.*, 16/132; *Gordon v. Ward*, 16/360; *D. & M. Ry. Co. v. Adams*, 15/458; *Strong v. G. T. Ry. Co.*, 15/206. But since the enactment of 1867, all such contracts must be in writing, and this provision has been substantially retained in every revision since. The act of 1867 was not designed to enlarge the powers of companies in restricting their liability, but to restrain them.—*McMillan v. M. S. & N. I. R. Co.*, 16/79. The carrier must prove the contract limiting his liability.—*Am. Trans. Co. v. Moore*, 5/368; *McMillan v. M. S. & N. I. R. Co.*, 16/79, 112. But liabilities already incurred will not be affected by a subsequent contract unless there is an intent to waive such claims.—*C. & G. T. R. Co. v. Perkins*, 17/296. Liability in the transportation of live stock under a contract of exemption from results of negligence.—*Hawkins v. G. W. Ry. Co.*, 17/57. And although not a common carrier as to live stock and not liable under its contract for delays in transportation, the company is bound to furnish the shipper an opportunity to give the animals the care they may require.—*Smith v. M. C. R. R. Co.*, 100/148. In putting in side tracks, a railroad company is not acting as a common carrier, and may make terms limiting its liability.—*Mann v. P. M. R. Co.*, 135/210.

FACILITIES FOR BUSINESS: The company must furnish facilities for transportation.—*M. S. & N. I. R. Co. v. Shurtz*, 7/519. But only such as will meet the ordinary exigencies of the business of the road.—*M. S. & N. I. R. Co. v. McDonough*, 16/210. And are not required to provide against unforeseen contingencies which ordinary prudence and foresight could not anticipate.—*Id.*; *M. C. R. Co. v. Burrows*, 33/6. But must be prepared to transport, without unreasonable delay, the usual and ordinary quantity of freight offered for transportation.—*Id.* The common law liability of com-

mon carriers includes the furnishing of safe and suitable cars.—*G. W. Ry. Co. v. Hawkins*, 18/427, 433. And companies transporting live stock under limited liability must furnish safe cars.—*Hawkins v. G. W. Ry.*, 17/57.

ORDER OF SHIPMENT: It is true as a general proposition that it is the duty of a common carrier to forward freight in the order in which it is received; yet a great public necessity or calamity—like the Chicago fire of 1871—will justify a departure from this general rule, so as to give preference to “relief goods” needed to alleviate suffering.—*M. C. R. Co. v. Burrows*, 33/12.

GOODS DEPOSITED: A railroad company is not liable as a common carrier for property deposited in its warehouse awaiting orders for transportation but is liable only as warehouseman; or, if not allowed to charge for storage, as a gratuitous bailee.—*M. S. & N. I. R. Co., v. Shurtz*, 7/515. The liability as common carrier begins when the order for shipment is given and the destination named.—*Id.*; *Meloche v. C. M. & St. P. Ry. Co.*, 116/69. When goods in the carrier’s hands are transferred the liability of the company to the transferee begins as soon as notice of the transfer is given.—*C. & G. T. Ry. Co. v. Perkins*, 17/296.

DAMAGES: If a carrier fails to deliver goods shipped to a market in a reasonable time a fall in market value of the property, between the time when it should have been delivered and the time of its actual delivery, may be recovered as damages.—*Sisson v. C. & T. R. Co.*, 14/489. Proof of negligent delay by a subsequent carrier, and that without it injury would have been avoided, is a complete answer to an action seeking to hold the first carrier responsible by reason of its delay for injury to fruit by freezing while in the custody of such subsequent carrier.—*M. C. R. Co. v. Burrows*, 33/6. And a carrier is liable only for such delays as are the proximate cause of the injury complained of.—*Id.*; *D. & B. C. Ry. Co. v. McKenzie*, 43/609. Damages to goods while in transit may be recouped in a suit by the carrier for freight charges.—*Ward v. Fellers*, 3/281; *Bancroft v. Peters*, 4/619; *Strong v. G. T. Ry. Co.*, 15/206. See *Am. Mer. U. Exp. Co. v. Phillips*, 29/515. In replevin for goods held for transportation charges, damages to the goods while in transit may be shown to show that the carrier has no right of lien.—*Bancroft v. Peters*, 4/619.

LIEN FOR FREIGHT: A carrier who receives goods wrongfully or without the consent of the owner has no lien thereon for freight charges.—*Fitch v. Newberry*, 1 Doug. 1.

(158) § 6240. SEC. 15. Whenever any lands are condemned to the public use, by any railroad, bridge or tunnel company, under the provisions of this act, such company shall pay to the owners and others interested in the lands condemned, in addition to the damages and compensation awarded by the commissioners or jury, a reasonable attorney fee, to be fixed and determined by the court when the report or verdict is confirmed, or as soon thereafter as may be, and the attorney fee, so allowed, together with witness fees and other costs and disbursements, to be taxed as in civil actions, shall be paid, tendered, or deposited with the damages or compensation as hereinafter provided, before such company shall have any right to enter upon or take possession of the lands condemned.

Am. 1899, Act 266.

This section incorporated the provisions of Act No. 138 of 1863.

TENDER OF DAMAGES: Tender prior to amendment of 1883.—*T., A. A. & G. T. Ry. Co. v. Dunlap*, 47/456. To be paid, etc., as hereinafter provided.—Section 202 infra. No execution for damages and costs can issue against the company.—*Derby v. Gage*, 60/1.

ATTORNEY FEE: The provision for an appeal from “the appraisal or report of the commissioners or jury,” contained in section 166 infra, does not authorize an appeal from the allowance of an attorney fee made under this section.—*D. & T. Shore Line R. Co. v. Hall*, 133/302. The legislature seemed to consider the judge before whom the proceeding was had as best qualified to fix the amount of the attorney fee.—*Id.* The circuit judge is the final arbiter as to amount of attorney fees.—*B. C. & A. R. Co., v. Anderson*, 146/329. See *Patterson v. Mead*, 148/660.

(159) § 6241. SEC. 16. In case any of the real estate required by said company for the purposes aforesaid is owned by a person insane, a minor, or otherwise incompetent, the guardian of the estate of such person shall, before the company shall take possession of the land, file a deed of guardian.

tent and under guardianship, and such company and the guardian of such person shall agree upon a price for the same, and enter into a contract in writing therefor, the said guardian shall, upon the approval of the same by the probate court of the county in which the said real estate is situated, convey said real estate, in accordance with the terms of such contract, to said railroad company, and the deed thereof shall be valid in law to convey the title of such person under guardianship to said company, in accordance with the terms of said contract.

Acquisition of
real estate,
etc.

(160) § 6242. SEC. 17. In case any railroad, bridge or tunnel company is unable to agree for the purchase of any real estate, property or franchises required for the purpose of its incorporation, it shall have the right to acquire title to the same in the manner and by the special proceedings prescribed in this act; but there shall be no power, except for crossing, to take the track or right of way of any other railroad company except when any road-bed or part thereof has for five years remained, or shall hereafter for five years remain in an unfinished condition and without having the ties and iron placed and continued thereon up to the time measures are instituted to appropriate the same as hereinafter authorized, any other railroad corporation shall have the right to acquire title to the same and to the real estate and easements held by such company for use in connection therewith, in the manner prescribed for obtaining other property or franchises required for its use, and in such case proceedings may be instituted in a court of record of any county wherein a part of such road-bed sought to be acquired may be situate, and all of such road-bed and property aforesaid within this state, or only a part thereof at the election of the applicant may be included in one proceeding. Notice of the application shall be given the company or corporation owning or claiming an interest in the road-bed and property mentioned when created under the laws of this state by serving a copy of the petition and notice hereinafter mentioned personally upon its president, any vice president, superintendent, secretary, treasurer, general manager, or general counsel, if either of them reside within the state, ten days or more prior to the presentation of the same to the court, but if they do not, then service may be made by publication as required by section eighteen of this act, except in such case a description of the property as in this section provided shall be sufficient, and if such company or corporation was not created under the laws of this state, it may be served by delivering such copy of the petition and notice to either of said officers personally at least thirty days previous to presenting such petition to the court, or by publication as required in said section eighteen, except it shall be sufficient to describe the property to be taken as provided in this section. It shall be sufficient in such petition to describe the property

sought to be appropriated as the line is designated in the articles of association, or articles amendatory thereof, and by which it was established, and further designating it as the road-bed and property connected therewith of the company or corporation then owning or claiming it whose title is sought to be acquired.

Am. 1899, Act 266.

UNABLE TO AGREE: The inability to acquire title amicably is jurisdictional, and must be alleged, and may be controverted.—C. & M. L. S. R. Co. v. Sanford, 23/426; G. R. L. & D. R. Co. v. Weiden, 69/578, 579; G. R. & I. R. Co. v. Weiden, 70/392; C. S. & M. R. Co. v. B. C. & B. C. R. Co., 106/473; T. & A. A. and N. M. Ry. Co. v. D. L. & N. R. Co., 62/576; M. C. & L. M. R. Co. v. Clark, 23/519; Lane v. Saginaw, 53/443; F. & P. M. R. Co. v. D. & B. C. R. Co., 64/362. Sufficient showing of.—Railway Co. v. Railway Co., 106/473; Railroad Co. v. Hall, 133/302.

CROSSING RAILROAD: No power is given of taking the track or right of way of another railroad company, without its consent, except for crossing.—Union Depot Co. v. Backus, 92/50.

UNUSED ROAD BED: Where a railroad company ceases to run cars over a portion of its road for twelve years, the question of abandonment is to be determined from the facts and not from testimony as to the secret intention of the officers of the company.—Hickox v. C. & C. S. Ry. Co., 94/237.

APPEAL: See U. S. Gypsum Co. v. Circuit Judge, 150/668.

PETITION: Sufficiency of petition. Duty of landowner to defeat showing made in petition.—Chicago, etc., R. Co. v. G. R. & I. R. Co., 153/687.

(161) § 6243. SEC. 18. For the purpose of acquiring such title such company may present a petition to any court of record for such county, praying for the appointment of three commissioners. Said petition shall be in the name of the company, shall be signed by one of the directors, or the engineer or the attorney of said company on its behalf, and shall be verified by the oath of the person so signing the same, and shall contain the description of all the real estate, property or franchises, or so much thereof as the company seeks to acquire under such petition in said county; and that said company is duly incorporated; that it has a railroad, railroad bridge or railroad tunnel constructed, specifying the points from and to which the same is in operation, or that it is the intention of said company, in good faith, to construct, finish and maintain a railroad, railroad bridge or railroad tunnel from and to the places named for that purpose in its articles of association; that the capital stock of the company has been in good faith subscribed as required by this act to organize such company; that the property described in the petition is required for the purpose of constructing, operating or repairing the railroad or its appurtenances, or the railroad bridge or tunnel or its appurtenances, as the case may be; and that the taking thereof is necessary for the public use, and that the company has not been able to acquire title thereto, and the reason of such inability. The petition must also state the names and places of residence of the parties, so far as the same can with reasonable diligence be ascertained, who own, or have, or claim to own or have, estates or interests in said lands or property; and if any such persons are infants, their ages, as near as may be, must be stated, and if any of them are idiots, or

May present petition to acquire title.

To be in company name.

What to show.

To show names, etc., of owners of property to be acquired.

Copy of
petition, upon
whom served.

How served,
etc.

persons of unsound mind, or are unknown, it must be so stated, together with such other facts and allegations as to incumbrances or otherwise as will be sufficient to show who have or claim to have interests in said lands, real estate or property, and such other matters as the company may see fit to make. A copy of such petition, with a notice of the time and place when and where the same will be presented to such court, must be served on all persons whose interest will be affected by the proceeding, at least ten days prior to the presentation of the same to the court, as follows, viz.:

First. If the person upon whom service is to be made resides in this state, and is not an infant under the age of fourteen years, idiot or person of unsound mind, service of a copy of such petition and notice must be made on him or his agent or attorney authorized to contract for the sale of real estate described in the petition, personally, or by leaving the same at the usual place of residence of such person or agent, with some person of suitable age; and if he resides out of this state, but has such agent as aforesaid residing in this state, then such service may be made on such agent in the manner aforesaid, or upon him personally out of or within this state; or it may be by publishing a notice stating briefly the object of the application, and giving a description of the land, interest therein, or property to be taken, and in some paper published in the county in which the said lands or property are situated, if there be one, and if not, then in some weekly paper published in the city of Detroit once in each week for six successive weeks next previous to the presentation of the petition; and if the residence of such person or persons residing out of this state be known, a copy of such petition and notice shall be deposited in the postoffice at least thirty days previous to presenting such petition, directed to such person at his place of residence, as near as may be, postage prepaid;

In case person
is minor, idiot,
etc.

Second. If any person on whom such service is to be made is a minor under the age of fourteen years, or an idiot or person of unsound mind, and resides in this state, such service shall be made as aforesaid on his guardian, or if none, then on the person who has the care of, or with whom such infant, idiot or person of unsound mind resides;

In case person
is unknown.

Third. If the person on whom such service is to be made be unknown, or his residence unknown, then such service may be made by publication for six weeks in the same manner provided in the first subdivision of this section, and the court or judge shall appoint an attorney to appear for and protect the rights of any such person;

In case minor,
idiot, etc., has
no guardian.

Fourth. In case any party to be affected by the proceedings is an infant, idiot or person of unsound mind and has no guardian, the said court, or the judge of said court, shall appoint a special guardian or committee to appear for and attend to the interests of such infant, idiot or person of un-

sound mind, and all notices to be served in the progress of the proceedings may be served on such special guardian;

Fifth. In all cases not otherwise provided for, service of orders, notices and other papers in the proceedings authorized by this act may be made as the said court or judge may direct. ^{Other cases as judge may direct.}

Am. 1901, Act 80.

TAKING PRIVATE PROPERTY: For the constitutional provisions relative to the taking of private property for public use, see Const. xiii. Eminent domain.—*Woodmere Cemetery v. Roulo*, 104/599.

PROCEEDINGS TO CONDEMN: These proceedings are purely statutory and the remedies therein provided are exclusive, and cannot be extended beyond those contained in the act.—*Derby v. Gage*, 60/4. They are not judicial and do not involve a contest on litigious rights.—*T. A. A. & G. T. Ry. Co. v. Dunlap*, 47/462. They are special and unlike ordinary trials at law.—*Id.*; *P. H. & S. W. Ry. Co. v. Voorheis*, 50/510. In proceedings based upon the right of eminent domain, it is well settled that every material requirement of the statute must be strictly followed and the proceedings must affirmatively show substantial adherence to the course prescribed.—*T. A. A. & N. Ry. Co. v. Munson*, 57/44. All the conditions necessary to the taking of private property, which have been prescribed by the statute, must affirmatively appear to have existed.—*M. C. & L. M. R. Co. v. Clark*, 23/525. The power of a company to begin proceedings for the condemnation of lands is not lost by its consolidation with another company into a new organization.—*T. A. A. & G. T. Ry. v. Dunlap*, 47/456. Defects in proceedings.—*Id.* Condemnation proceedings usually, but not always, apply to tangible property. It is never any objection to them that intangible rights are necessarily taken, provided remuneration is lawfully assessed and paid.—*Dunlap v. T. A. A. & G. T. Ry. Co.*, 50/475. As to taking a homesteader's inchoate right.—*F. & P. M. Ry. Co. v. Gordon*, 41/420. The appropriation of private property does not come under the "judicial power" as it is located under the constitution in courts, and except for the constitution, the nature of the tribunal of condemnation would have been discretionary with the legislature.—*G. R. L. & D. R. Co. v. Chesebro*, 74/471. When a railroad company occupies a street without condemnation proceedings, the occupancy is a continuous wrong to abutting owners.—*Hoffman v. F. & P. M. Ry. Co.*, 114/316.

PETITION: The jurisdiction or right to appoint commissioners depends upon the existence of certain facts, which must be made to appear by petition.—*T. S. & M. R. Co. v. E. S. & St. C. R. Co.*, 72/222. The petition must proceed for the entire interest of persons interested in the land to be taken. Separate proceedings cannot be taken against several owners of undivided interests in the same parcel.—*G. R., N. & L. S. R. Co. v. Alley*, 34/16, 18. Formerly a statement as to incumbrances seemed optional.—*C. & M. L. S. R. Co. v. Sanford*, 23/426. But now mortgagees of the land must be made defendants.—*M. A. L. Ry. Co. v. Barnes*, 40/383. Tenants in common.—*Draper v. Williams*, 2/536. The petition may embrace all the lands in the county sought to be taken, though owned by different persons, but several interests cannot be confounded, but each owner's interests must be separately set forth.—*C. & M. L. S. R. Co. v. Sanford*, 23/428-9. The petition must declare the intention of the company to construct, finish and maintain a road.—*Id.* 425. Sufficient statement of intention.—*Marquette, etc., R. Co. v. Longyear*, 133/94. It must allege that the taking is necessary for the public use.—*G. R. N. & L. S. R. Co. v. Van Driele*, 24/409. What is sufficient allegation thereof.—*T. S. & M. R. Co. v. E. S. & St. C. R. Co.*, 72/223. Must show inability to acquire title amicably.—See note, "Unable to agree," to the preceding section. It must show the parties interested.—*C. & M. L. S. R. Co. v. Sanford*, 23/418. And whose property is sought to be taken.—*M. C. & L. M. R. Co. v. Clark*, 23/519. If the petition alleges that the property sought to be taken is "required" for the public use, that is sufficient, as "required" in that connection is synonymous with "necessary."—*F. & P. M. Ry. Co. v. D. & B. C. R. Co.*, 64/360. The petition is not required to give the grade.—*B. C. B. L. R. Co. v. Hitchcock*, 90/533. It is not necessary that all the lands within the county necessary to be acquired for the construction of the road should be embraced in one petition.—*M. & S. Ry. Co. v. Longyear*, 133/94. As to petition, see *Railway Co. v. Campbell*, 140/384.

DESCRIPTION OF PROPERTY: The rights and property sought to be taken must be fully described.—*C. & M. L. S. R. Co. v. Sanford*, 23/418; *T. A. A. & N. Ry. Co. v. Munson*, 57/42; *T. A. A. & N. M. Ry. Co. v. D., L. & N. R. Co.*, 62/564; *F. & P. M. Ry. Co. v. D. & B. C. R. Co.*, 64/350; *B. C. B. L. R. Co. v. Hitchcock*, 90/533; *C. S. & M. R. Co. v. B. C. & B. C. R. Co.*, 106/473. For defective descriptions see *Railroad Co. v. Sanford*, 18/418; *Railway Co. v. Munson*, 57/42. Where land is to be taken for public purposes, the description should be as definite as is necessary in a deed.—*D. S. & D. Ry. Co. v. Judge*, 95/320, citing *Mathias v. Drain Com'r*, 49/465; *Bennett v. Drain Com'r*, 56/634. Each distinct parcel must be described.—*Goodrich v. Detroit*, 123/561.

MAP AND SURVEY: See note to section 150 ante.

NOTICE, ETC.: Copy of petition and notice must be served on all persons whose interests are affected. Wherever the owners of any parcel are not all before the court, no proceeding can be had which will affect any of their interests.—G. R., N. & L. S. R. Co. v. Alley, 34/16, 18. Jurisdiction is dependent upon proof of a valid notice to the land owners.—Morgan v. C. & N. E. R. Co., 36/428. Mortgagees must be made defendants.—M. A. L. Ry. Co. v. Barnes, 40/383. Collusive notice will not avail.—Dunlap v. T., A. A. & G. T. Ry Co., 46/190. Notice need not be published if all parties interested appear voluntarily.—E. S. & S. C. R. Co. v. Benham, 28/459. Notice may be served personally on non-resident land-owner without the state, even though he has an agent within the state.—Railroad Co. v. Bordner, 108/236.

RAILROAD CO.'S PROPERTY: The property of a railroad company may be taken for public use, whenever the necessities of the public require it, to an extent not absolutely necessary to successfully carry out the objects and purposes of the franchises granted to the company, and which are in their nature public; and the land occupied by the company as its right of way may be taken by the state under its power of eminent domain, subject to the single limitation mentioned, to the same extent as the land of any private citizen, for either the use of another railway company or for a public highway.—T., A. A. & N. M. Ry. Co. v. D., L. & N. R. Co., 62/571-2. See F. & P. M. R. Co. v. D. & B. C. R. Co., 64/350, 366; G. R., N. & L. S. R. Co., v. G. R. & I. R. Co., 35/273. Condemnation of one company's property by another.—Railway Co. v. Railroad Co., 106/473. Opening of street across station grounds.—Commissioners v. Railway Co., 93/58; Village of Royal Oak v. Railway, 138/294.

DISCONTINUANCE: A discontinuance as to one of several parties interested in the same parcel of land operates as a discontinuance as to all.—G. R. N. & L. S. R. Co. v. Alley, 34/16, 18. And a discontinuance of proceedings as to mortgagees without adjudicating on their rights is fatal to the proceedings.—M. A. L. Ry. Co. v. Barnes, 40/383.

In case road
under lease,
etc.

Petition, by
whom signed.

(162) § 6244. SEC. 19. Whenever the line or road of any company organized under this act shall be in the possession or use of any other railroad company, under any lease, contract, or agreement, for the building or operating the same, under the laws of this state, it shall be competent for the latter company, with the assent and in the name of the former company, to institute and prosecute proceedings for acquiring title to any land or property for the purposes and under the conditions mentioned in preceding sections. In such case the petition may be signed and verified by a director, engineer or attorney of either company. Whenever any company organized under this act shall be in use or possession of any railroad acquired from another company, by purchase or consolidation, it shall be competent for the company so in possession and use to institute and prosecute condemnation proceedings in its own name, to acquire land or property for railroad purposes, in connection with the railroad so acquired. In such case the petition and proceedings shall, so far as practicable, comply with the general provisions of the statute regulating condemnation proceedings.

Am. 1901, Act 80.

Appointment
of commission-
ers of ap-
praisal.

(163) § 6245. SEC. 20. On presenting such petition to said court or the judge thereof at chambers, with proof of service of a copy thereof, and due notice as aforesaid, all persons whose estate or interest are to be affected by the proceedings, may show cause against the prayer of the petition, and may disprove any of the facts alleged therein; and said court or judge shall hear the proofs and allegations of the parties; and if no sufficient cause is shown against grant-

ing the prayer of the petition, said court or judge shall make an order appointing three disinterested and competent freeholders as commissioners to ascertain and determine the necessity for taking such lands, franchises or other property, and to appraise and determine damages or compensation to be allowed to the owners and persons interested in the real estate or property proposed to be taken in such county for the purposes of the company; and such court or the judge thereof shall fix the time and place for the first meeting of such commissioners: Provided, That any person or persons, or company, whose estate or interest is to be affected by the proceedings, may demand and have from such court, at the time of hearing of said petition, a jury of twelve freeholders of said county to ascertain and determine the necessity for taking such lands, franchises, or other property, and to appraise and determine the damages or compensation to be allowed therefor. Thereupon the court shall direct the sheriff or any constable of the county, to make a list, in writing, of twenty-four inhabitants of the county, qualified to serve as jurors in the courts of record in this state. Such sheriff or officer shall, before he proceeds to make such list, be sworn by the court or judge to select such persons according to his best judgment, and without favor or partiality to either party. From such list the person or persons demanding such jury may alternately strike off six names, and the railroad company six names, and in case of either of them refusing or neglecting to do so, the judge shall strike off from said list for the party so refusing or neglecting, so as to leave only twelve names thereon. Such court, or the judge thereof, shall issue a venire in the usual form, inserting therein the twelve names so remaining on said list, and requiring such jury to meet at the time and place appointed therefor by the court, which said venire may be served by the sheriff, any constable, or other proper officer of the county, as in other cases; and if at the time and place appointed by said court or judge for said jury to meet, any of the persons named as jurors do not attend, or if any named in the venire, or chosen as talesmen, shall be rejected in a challenge for cause (which right of challenge is hereby granted), it shall be competent for said court, or the judge thereof, to order the said sheriff or other officer to summon immediately as many competent persons as may be necessary, with the persons in attendance as jurors, to furnish a panel of twelve jurors; and if no jury be demanded on the part of any person mentioned in said petition, his or her right to the same shall be deemed to have been waived. In case any parcel of land is owned or occupied by parties having different interests or estates therein or in any part thereof, they may be united as respondents in respect to the same in the petition, and thereafter the proceedings touching the same shall be carried on as one suit. The demand of any one of the re-

Proviso, jury
may be had.

Impaneling of
same, etc.

spondents for a jury shall be deemed to be a demand for all; and if they shall fail or neglect to unite in striking six names from the jury list, the judge shall strike off six names for them; and in such cases the jury shall not only determine the entire damages and compensation to be paid for the whole property taken, but shall, in their report, also justly and impartially apportion and award the amounts to be paid to the owner or owners of each estate in the land so taken.

COMMISSIONERS: See Const. xiii, 2, Sec. 27, ante. They are judges of the law, as well as the facts in the case.—*P. H. & S. W. Ry. Co. v. Voorheis*, 50/510. They are not like a common law jury, and their own affidavits may be used to impeach their finding or show that they proceeded upon a wrong principle in the ascertainment of damages.—*M. H. & O. R. Co. v. Probate Judge*, 53/222. The jurisdiction of right to appoint commissioners depends upon the existence of certain facts which must be made to appear by petition to the court. *Railroad Co. v. Railroad Co.*, 72/222-3.

JURY: A jury may be demanded on the hearing. It is a substantial right that should not be trifled with.—*P. H. & N. W. Ry. Co. v. Callanan*, 61/14. When a jury is demanded by only one party, the inquiry does not extend to the case of those other parties who have not demanded it.—*C. & M. L. S. R. Co. v. Sanford*, 23/427. The jury should be selected in the presence of the court.—*Conver's Appeal*, 18/459. The jurors may be selected from any part of the county.—*Id.* As to challenges, see *D. W. T. & J. R. Co. v. Crane*, 50/182. Peremptory challenges not allowed.—*Conver's Appeal*, 18/459. But challenges for cause may be made.—*Id.*; *Peninsular Ry. Co. v. Howard*, 20/26. Jurors must be freeholders.—Const. xiii, 2; *Peninsular Ry. Co. v. Howard*, 20/18; *C. & M. L. S. R. Co. v. Sanford*, 23/424. When the objection that a juror was not a freeholder will not be ground of reversal.—*Railroad Co. v. Beach*, 110/209. And the proper course, when a jury is required to be made up of persons possessing a particular qualification, is for the order of the court to direct the summoning of such persons.—*M. C. & L. M. R. Co. v. Clark*, 23/525. A stockholder of the railroad corporation is not competent to sit as a juror.—*Peninsular Ry. Co. v. Howard*, 20/18. Nor one who has given his note in aid of the railroad, even by consent of the parties.—*M. A. L. Ry. Co. v. Barnes*, 40/383. When a person has been once stricken from the list by one of the parties, he cannot be summoned as a talesman on the same jury.—*In re D. & P. R. Co.*, 2 Doug. 367.

CONDEMNATION PROCEEDINGS: Right of appeal.—*U. S. Gypsum Co. v. Circuit Judge*, 150/668. Review by certiorari.—*Railroad Co. v. G. R. & I. R. Co.*, 153/686. Burden of proof.—*P. M. R. Co. v. U. S. Gypsum Co.*, 154/290.

Duties and powers of commissioners of appraisal.

(164) § 6246. SEC. 21. The commissioners shall take and subscribe the oath prescribed by article eighteen of the constitution.¹ Any of them may issue subpœnas, administer oaths to witnesses, and a majority of them may adjourn the proceedings before them from time to time in their discretion. Whenever they meet, except by appointment of the court or judge, or by previous adjournment, they shall cause reasonable notice of such meeting to be given to the parties who are to be affected by their proceedings, or the attorneys or agents of such parties. They may view the premises described in the petition, and shall hear the proof and allegations of the parties, and shall reduce the testimony, if any is taken by them, to writing, if requested to do so by either party, and after the testimony is closed in such case, and without any unreasonable delays, and before proceeding to the examination of any other claim, all being present and acting, shall ascertain and determine the necessity of taking and using any such real estate or property for the purposes described; and if they deem the same necessary to be taken,

¹See Const. of 1909, Art. XVI, 2.

they shall ascertain and determine the damages or compensation which ought justly to be made by the company therefor to the party or parties owning or interested in the real estate or property appraised by them. They shall also determine and certify what sum ought to be paid to the general or special guardian of an infant, idiot, or person of unsound mind, or to said court, to be held for an unknown party in interest not personally served with notice of the proceedings and who has not appeared, for damages and cost or expenses and counsel fees. They shall make a report to said court or judge, signed by them, of the proceedings before them, if any, which may be filed with the clerk of the court, either in vacation or term time, or the probate court, as the case may be. Said commissioners shall be entitled to two dollars a day for each day they are engaged in the performance of their duties, to be paid in the first instance by the company. In case a jury shall have been demanded and ordered by the court, pursuant to section twenty-one of this article, the said jury shall proceed to ascertain and determine the necessity of taking and using any such real estate or property, and the damage or compensation to be paid by the company therefor, in the same manner and with like effect as is provided in this section in the case of commissioners, and as is further provided in said section twenty-one; but they shall all be present and act together during the proceedings, and before acting shall take and subscribe an oath that they will justly and impartially ascertain and determine the necessity of taking and using any such real estate or property for the purposes proposed; and if they deem the same necessary to be taken, will ascertain and determine the damages or compensation which ought justly to be made by said company to the owners of or persons interested in each particular description of real estate mentioned in said petition who have demanded said jury; and they shall be entitled to two dollars for each day they are engaged in the performance of their duties, to be paid in the first instance by the company. The said judge, or a circuit court commissioner to be designated by him, may attend said jury, to decide questions of law and administer oaths to witnesses, and he may appoint the sheriff or other proper officer to attend and take charge of said jury while engaged in said proceedings. And the jury shall proceed to determine the amount of damages to be awarded, and shall have all the powers hereby conferred upon commissioners; and a report signed by the jury, where the judge is or is not in attendance, shall be valid and legal. At any time before the report of the jury or commissioners shall be made to the court it shall be competent for the company, after sufficient cause has been shown and with leave of the court, to discontinue all pending proceedings in any case and to institute new proceedings at any time thereafter; but the

Fees of same.

Duties and powers of jury.

Damages, etc.

Compensation of jury.

Judges may attend jury.

Jury shall have commissioners' powers.

Company may discontinue proceedings * before report by paying costs and attorney fees.

company in all such cases shall pay all the costs of such proceedings so discontinued, with an attorney fee, to be taxed as in cases at law.

OATH: The oath must embrace in substance everything required by the statute.—*E. S. & St. C. R. Co. v. Benham*, 28/459.

PROCEEDINGS OF JURY: They are judges both of law and of fact.—*T., A. A. & G. T. Ry. Co. v. Dunlap*, 47/466; *Chamberlain v. Brown*, 2 Doug. 120; *P. H. & S. W. Ry. Co. v. Voorheis*, 50/510; *Railroad Co. v. Railroad Co.*, 64/363; *G. R., L. & D. R. Co. v. Chesebro*, 74/471. The jurors must all be present and unanimous in their verdict.—*C. & M. L. S. R. Co. v. Sanford*, 23/418. And their inquiry is directed only toward those who have demanded a jury.—*Id.* The law contemplates that the practice respecting the admission of testimony should be as simple as a due regard to substantial justice will permit. It assumes that the jury may conduct the inquiry without the aid of any legal expert.—*M. A. L. Ry. Co. v. Barnes*, 44/226; *D. W. T. & J. R. Co. v. Crane*, 50/187-8. But their conclusions are not based entirely on testimony. They are expected to use their own judgment and knowledge from a view of the premises and their experience as freeholders, quite as much as the testimony of witnesses to matters of opinion.—*T., A. A. & G. T. Ry. Co. v. Dunlap*, 47/466; *T. C., K. & G. R. Co. v. Seymour*, 81/380-1. The corporate existence of the company cannot be passed upon.—*Schroeder v. D., G. H. & M. Ry. Co.*, 44/387. Nor can the title of a landholder be litigated in such proceedings.—*P. H. & S. W. Ry. Co. v. Voorheis*, 50/506; *M. C. & L. M. R. Co. v. Clark*, 23/519. When the finding of the jury is conclusive as to necessity, damages, compensation, etc.—*P. H. & S. W. Ry. Co. v. Voorheis*, 50/506; *G. R. & I. R. Co. v. Weiden*, 70/390. Setting aside award.—*D. W. T. & J. R. Co. v. Crane*, 50/182. Adjournment.—*Railroad Co. v. Beach*, 110/209.

NECESSITY: The finding of the jury must distinctly determine that the taking is necessary for the public use.—*M. C. & L. M. R. Co. v. Clark*, 23/519; *G. R. N. & L. S. R. Co. v. Van Driele*, 24/409. The necessity for the public use and the necessity for the taking must both be found.—*McClary v. Hartwell*, 25/139. And also the necessity of taking the land in question.—*M. C. & L. M. R. Co. v. Clark*, 23/519. For a sufficient finding, see *E. S. & St. C. R. Co. v. Benham*, 28/459; also, *Morgan's Appeal*, 39/675. "Required" is synonymous with "necessary" in this connection.—*F. & P. M. R. Co. v. D. & B. C. R. Co.*, 64/360. The necessity is not the same in all cases. If the road is itself found necessary, it may not be necessary to lay it over the premises in dispute; and the necessity of the road may not involve the necessity of taking all that is sought for buildings and depot grounds.—*C. & M. L. S. R. Co. v. Sanford*, 23/428. Necessity of condemnation of gravel pit.—*Railroad Co. v. Bordner*, 106/236.

DAMAGES: COMPENSATION: See Const. xiii, 2, and notes. (Section 27 ante.) An award of damages must give compensation, on a money basis.—*T., A. A. & N. Ry. v. Munson*, 57/42. The compensation cannot be sworn to by witnesses, but must be found by the jury from proper data. Compensation for, rather than the value of, the land taken is what would be allowed and includes more than the mere value.—*Grand Rapids v. G. R. & I. R. Co.*, 58/648. See *People v. L. S. & M. S. Ry. Co.*, 52/277. The jury should consider and the land owners should lay before them all the consequences of the appropriation of the land in the manner in which the company will use it. Citing *Harlow v. M. H. & O. R. Co.*, 41/336; *Dunlap v. T. A. A. & G. T. Ry. Co.*, 50/470. It is the business of the jury to compensate the owner for what his landed interest will suffer from the use proposed to be made of it by the railroad company.—*Barnes v. M. A. L. Ry. Co.*, 65/253. Adequate compensation is such only as puts the injured party in as good condition as he would have been if the injury had not been inflicted. It includes the value of the land, or the amount to which the value of the property from which it is taken is depreciated.—*G. R. & I. R. Co. v. Heisel*, 47/398-9. Compensation should be made for the interruption of, or damage to, business.—*G. R. & I. R. Co. v. Weiden*, 70/395. The utility of the land taken for farm purposes is a proper subject of consideration in awarding compensation for damages.—*M. A. L. Ry. Co. v. Barnes*, 44/227. Injury to homestead rights.—*P. H. & S. W. Ry. Co. v. Voorheis*, 50/506. The damage to each description must be found separately.—*C. & M. L. S. R. Co. v. Sanford*, 23/418; *B. C. B. L. R. Co. v. Hitchcock*, 90/533, 546. The jury need not specify each particular item of damage or compensation, but it is contemplated that a general finding will be made.—*F. & P. M. R. Co. v. D. & B. C. R. Co.*, 64/364; *M. A. L. Ry. Co. v. Barnes*, 44/222; *P. H. & S. W. R. Co. v. Voorheis*, 50/511. Undivided sum for joint owners.—*E. S. & St. C. R. Co. v. Benham*, 28/459; *M. A. L. Ry. Co. v. Barnes*, 44/222. Specification of mortgagee's interest.—*Id.* The claimant should present all his demands at once. It is not permissible to split up claims and defer part for future action.—*Harlow v. M. H. & O. R. Co.*, 41/336. The jury is presumed to have considered all the elements of damages brought to their notice.—*M. A. L. Ry. Co. v. Barnes*, 44/224. The owner is not entitled to the increased value of the land occasioned by work done thereon by the company before condemnation.—*Morgan's Appeal*, 39/675. Elements of damage and compensation to adjacent owner when street is occupied by railroad company.—*G. R. & I. R. Co. v. Heisel*, 38/62. Elements of damage and com-

compensation in condemnation of a railroad crossing.—F. & P. M. R. Co. v. D. & B. C. R. Co., 64/350. What are deemed to be damage absque injuria in case of opening a street across a railroad right of way.—Plymouth Village v. P. M. R. Co., 139/347. Damages not inadequate.—M. C. R. Co. v. Miller, 172/201.

JUDGE IN ATTENDANCE: His duties are advisory merely.—T., A. A. & G. T. Ry. Co. v. Dunlap, 47/466; G. R., L. & D. R. Co. v. Chesebro, 74/471-2. It is not his duty to instruct the jury; and should he do so, they are not bound by his instructions.—F. & P. M. R. Co. v. D. & B. C. R. Co., 64/363. The probate court cannot direct a continuance of condemnation proceedings pending before commissioners appointed by it.—M. C. R. Co. v. Probate Judge, 48/638.

REPORT OF JURY: Form of report held good.—E. S. & St. C. R. Co. v. Benham, 28/459; M. A. L. Ry. Co. v. Barnes, 44/222. Report held insufficient.—M. C. & L. M. R. Co. v. Clark, 23/519. Where the damages were assessed in view of the tract taken altogether, a slight error in the statement of the acreage of the land was held not to invalidate.—Morgan's Appeal, 39/675. When an award of damages in gross is proper.—Railroad Co. v. Railroad Co., 106/473.

(165) § 6247. SEC. 22. On such report being made by the commissioners or jury, the court, on motion, shall confirm the same on the next or any subsequent day when in session, unless for good cause shown by either party; and when said report is confirmed, said court shall make an order containing a recital of the substance of the proceedings in the matter of the appraisal, and a description of the real estate or property appraised, for which compensation is to be made, and shall also direct to whom the money is to be paid, or when and where it shall be deposited by the company. Said court, as to the confirmation of such report, shall have all the powers usual in other cases.

CONFIRMATION OF REPORT: For good reasons shown, the probate court can withhold confirmation and set aside the report.—M. H. & O. R. Co. v. Probate Judge, 53/222. Where interested parties are present and do not object to jurors, the confirmation of their report will not be refused on the ground that it does not affirmatively appear that the jurors were freeholders.—M. C. & L. M. R. Co. v. Clark, 23/519. A probate order confirming a report is invalid if made out of term without notice to the respondent.—M. C. R. Co. v. Probate Judge, 48/638.

(166) § 6248. SEC. 23. A certified copy of the order so to be made shall be recorded in the office of the register of deeds for said county, in the book of deeds; and thereupon, on the payment or deposit by the said company of the sum to be paid as compensation for such land, franchise, or other property, and for costs, expenses, and counsel fees as aforesaid, and as directed by said order, the company shall be entitled to enter upon and take possession of and use the said land, franchise, and other property for the purpose of its incorporation; and all persons who have been made parties to the proceedings, either by publication or otherwise, shall be divested and barred of all right, estate, and interest in such real estate, franchise, or other property, until such right or title shall be again legally vested in such owner; and all real estate, or property whatsoever, acquired by any company under and in pursuance of this act, for the purpose of its incorporation, shall be deemed to be acquired for public use: Provided, The said sum [to] be paid as damages, and compensation, and costs, expenses, and counsel fees as aforesaid, shall be paid by the company, or deposited as provided

Order of court on report being made.

Record of order.

When company may take possession of land.

Proviso, time for payment of damages, etc.

in this act, within sixty days after the confirmation of said report by the said court; and in case said company fail or neglect so to do, such failure or neglect shall be deemed as a waiver and abandonment of the proceedings to acquire any rights in said land or property. Within twenty days after the confirmation of the report of the commissioners or jury, as above provided for, either party may appeal, by notice in writing to the other, to the supreme court, from the appraisal or report of the commissioners or jury; such notice shall specify the objections to the proceedings had in the premises, and the supreme court shall pass on such objections only, and all other objections, if any, shall be deemed to have been waived; such appeal shall be heard by the supreme court at any general or special term thereof, on notice thereof being given according to the rules and practice of the court. On the hearing of such appeal, the court may direct a new appraisal before the same or new commissioners or jury, in its discretion. The second report shall be final and conclusive upon all parties interested. If the amount of the compensation to be allowed is increased by the second report, the difference shall be a lien on the land appraised, and shall be paid by the company to the parties entitled to the same, or shall be deposited as the court shall direct; and in such case, all costs of the appeal shall be paid by the company; but if the amount is diminished, the difference shall be refunded to the company by the party to whom the same may have been paid, and judgments therefor and for all costs of the appeal shall be rendered against the party so appealing. On the filing of the report, such appeal, when made by any claimant of damages, shall not affect the said report as to the right and interests of any party, except the party appealing; nor shall it affect any part of said report in any case, except the part appealed from; nor shall it affect the possession of such company of the land appraised; and when the same is made by others than the company, it shall not be heard except on a stipulation of the party appealing not to disturb such possession during the pendency of such proceedings.

Appeals.

New appraisal.

Final report.

Costs in appeals.

Effect of appeal on report and possession of land.

PAYMENT: The failure of a railroad company to pay or deposit the damages, costs, expenses, and counsel fees awarded in condemnation proceedings, within sixty days after confirmation of the report of the jury, is a waiver and abandonment of such proceedings and prevents the company from acquiring any rights in the land sought to be condemned thereunder.—*Derby v. Judge*, 60/4. No execution can issue to collect the damages awarded.—*Id.*

APPEAL: An appeal from the confirmation of the report carries up the case as it stood before the court confirmed the report.—*Peninsular Ry. Co. v. Howard*, 20/24; *P. H. & S. W. Ry. Co. v. Voorheis*, 50/510; *T., A. A. & N. Ry. Co. v. Munson*, 57/44. But the notice of appeal must point out the errors and objections taken to the proceedings, all others being deemed as waived.—*M. A. L. Ry. Co. v. Barnes*, 44/225; *F. & P. M. R. Co. v. D. & B. C. R. Co.*, 64/350; *Morgan's Appeal*, 39/679. What will be reviewed.—*D. W. T. & J. R. Co. v. Crane*, 50/182; *P. H. & S. W. Ry. Co. v. Voorheis*, 50/506; *F. & P. M. R. Co. v. D. & B. C. R. Co.*, 64/350. A person whose rights are affected, as a mortgagee for instance, can appeal even though proceedings were discontinued as to him.—*M. A. L. R. Co. v. Barnes*, 40/383. Costs on appeal.—*T., A. A. & G. T. Ry. Co. v. Dunlap*, 47/456. Appeal does not affect the company.—*Mercer v. Williams, Walk.*, 85; *Bragg v. Detroit*, 5/348. The jury having determined the necessity, its findings will not be reviewed on appeal further than to ascertain that

there was evidence to support it.—*Railroad Co. v. Bordner*, 108 / 236. An assignment of error upon the action of the court in permitting an irregular adjournment will not be considered where it was assented to by the parties.—*Ann Arbor Railroad Co. v. Beach*, 110 / 209. The probate court having dismissed a petition to condemn lands, an appeal was taken to the circuit court, where the order was reversed, and an order made that the case stand for trial in the circuit court, before a jury, on its merits. On application for certiorari to review the action of the circuit court, the remedy by appeal was held inadequate, and an order to show cause why mandamus should not issue, accompanied by a stay of proceedings, should be granted.—*P. M. R. Co. v. U. S. Gypsum Co.*, 148 / 308. See *U. S. Gypsum Co. v. Circuit Judge*, 150 / 672.

(167) § 6249. SEC. 24. If there are doubts about the title, or to whom the money, or any part of it, to be paid as compensation for the real estate or property taken belongs, the court may direct the money to be paid into the said court by the company, and may determine who is entitled to the same, and direct to whom the same shall be paid, and may in its discretion order a reference to ascertain the facts on which such determination and order are to be made.

Judge to decide adverse claims.

P. H. & S. W. R. Co. v. Voorheis, 50 / 506. When commissioners are unable to apportion damages, they may award gross damages subject to apportionment by the court.—*C. S. & M. R. Co. v. B. C. & B. C. R. Co.*, 106 / 473. An order of the probate judge determining who is entitled to moneys paid into court under this section is appealable under C. L. 1897, Sec. 669, providing for appeals from probate court in cases "not otherwise provided for."—*Defoe v. Bay Circuit Judge*, 116 / 567.

(168) § 6250. SEC. 25. The court shall have power at any time to amend any defect or informality in any of the special proceedings authorized by this act, as may be necessary, or to cause new parties to be added, and to direct such further notices to be given to any party in interest as it deems proper; also to appoint other commissioners in the place of any who shall die, or refuse, or neglect, or are unable to serve, or who may leave or be absent from the state.

Unknown parties in interest, etc.

(169) § 6251. SEC. 26. At any time after an attempt to acquire title by any railroad, bridge or tunnel company, by an appraisal of damages or otherwise, if it shall be found that the title thereby attempted to be acquired is defective, the company may proceed anew to acquire or perfect the same in the same manner as if no appraisal had been made, and at any stage [of] such new proceedings the court may authorize the corporation, if in possession, to continue in possession, and if not in possession, to take possession of and use such real estate or other property during the pendency and until the final conclusion of such new proceedings; and may stay all actions or proceedings against any company, or any officer or workman of such company, on account thereof, on such company paying into court a sufficient sum, or giving security, as the court may direct, to pay the compensation therefor when finally ascertained; and in every such cause the party interested in such real estate or other property may conduct the proceedings to a conclusion if the company delays or omits to prosecute the same: Provided, Any railroad company which have heretofore entered upon, taken,

Proceedings, when title defective.

Proviso.

occupied and used any lands within this state for the purpose of their road, shall have the same right to acquire title to, or right of way over, said land so taken by them, as if they had proceeded to acquire said title or right of way before having entered upon the same.

Am. 1899, Act 266.

Defective Proceedings.—D., L. & N. R. Co. v. Probate Judge, 63/676. See also, 61/9, 33; 62/564; 63/645. May proceed anew.—Peninsular Ry. Co. v. Howard, 20/18, 27; Dunlap v. T. A. A. & G. T. Ry. Co., 50/470; M. C. R. Co. v. Miller, 172/201. If in possession, may continue so.—Mercer v. Williams, Walk. 85; Bagg v. Detroit, 5/336, 348. Acquiring title after taking possession.—Morgan's Appeal, 39/675. The supreme court cannot restrain the company from occupying and using the land sought to be condemned, pending proceedings by certiorari to review the condemnation proceedings.—T. C., K. & G. R. Co. v. Seymour, 81/378. Trespass on lands by railroad company.—Wood v. M. A. L. R. Co., 81/358.

Acquiring title to state or municipal lands.

(170) § 6252. SEC. 27. If any such company shall, for its purposes aforesaid, require any land belonging to the state, or to any city, village, county or town, the commissioner of the state land office, and the city, village, county and town officers respectively having charge of the said lands, may grant such lands to such company for a compensation which shall be agreed upon between them; or in case they cannot so agree, then such lands shall be appraised as in other cases. All petitions or notices, in cases when the state is the owner, shall be served on the commissioner of the state land office; where a city or village is the owner, on the mayor or other chief executive officer; when a county is the owner, on the prosecuting attorney of such county; and when the township is the owner, on the supervisor of such township.

On whom petitions or notices served.

Company may build spur tracks or branches.

(171) § 6253. SEC. 28. Any company organized under this act may build such spur tracks or branches as may be found necessary to develop business along its line of road, as the board of directors may judge to be expedient, and for that purpose shall have the same powers and rights in all respects as are conferred upon it for the construction of the main line, and may subscribe to the capital stock of any other company organized under this act with the assent of such other company; and any railroad chartered or organized under any other law of this state, may subscribe to the capital stock of any company organized under this act, not having the same terminal points and not being a competing line, with the assent of the company to whose stock such subscription is made; and any company organized under this act may make any arrangement with any other railroad company, whether organized or incorporated under this act or any other act, for running its cars over the road of such other company, or for the working and operating of such other roads as said companies shall mutually agree upon; and any companies organized or incorporated under this or any other act whose lines are connected, may enter into any arrangements for their common benefits, consistent with and

May take stock in other companies.

May arrange with other companies for running cars, etc.

calculated to promote the objects for which they were created. All companies owning or operating such spur or branch railroad, or making any such contract or agreement with connecting or intersecting lines of railroad, shall furnish cars and transport freight over such spur, branch or connecting road, at the same rates and subject to the same restrictions and regulations as shall be adopted for the transportation of freight upon the main line. All railroad companies in this state, shall furnish equal facilities for the transportation of passengers and freight to all railroads that shall connect with or intersect its line of railroad, without discrimination in favor of or against any such connecting or intersecting line of road.

Rates, etc., on branch roads and connecting lines.

All railroads to furnish equal facilities to other roads.

SPUR TRACKS: Whether the property to be condemned is necessary to accommodate the spur track and whether the taking is necessary to develop business along the main line are questions to be determined by the directors; but whether the taking of the property is necessary, or not, for the public use is a question for the commissioners or jury.—*Railroad Co. v. Railroad Co.*, 72 / 223.

OPERATING ANOTHER ROAD: When one company operates the road of another, it does so with all the rights and privileges, liabilities and duties of the latter company.—*McMillan v. M. S. & N. I. R. Co.*, 16 / 79. See *Gardner v. Smith*, 7 / 410.

EQUAL FACILITIES: The statutory requirement that all railroad companies shall impartially and diligently receive and forward the cars of other roads does not apply to cars unfit for passage, but means that no needless delays or hindrances shall be interposed, and that all precautions against the use of improper cars shall be adopted with reference to reasonable dispatch.—*Smith v. F. & P. M. Ry. Co.*, 46 / 262-3.

(172) § 6254. SEC. 29. Any railroad company in this state, forming a continuous or connecting line with any other railroad company, may consolidate with such other company, either in or out of this state, or partly within or partly without this state, into a single corporation: Provided, That no such companies owning parallel or competing lines shall be permitted to consolidate themselves into one corporation. The directors of said two or more corporations may enter into an agreement under the corporate seal of each, for the consolidation of the said two or more corporations, prescribing the terms and conditions thereof; the mode of carrying the same into effect; the name of the new corporation; the number of the directors thereof, and the names of those who shall be the first directors, which shall be deemed and taken to be the first election of the directors of the consolidated company, which number shall not be less than five nor more than fifteen; the time and place of holding the first election of directors after the consolidation, which time shall not exceed six months after such consolidation has been sanctioned by the stockholders of said two or more corporations, as hereinafter provided; the number of shares of capital stock in the new corporation; the amount of each share; the manner of converting the shares of capital stock in each of said two or more corporations into shares in such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations; and such new corporation shall possess all the powers, rights and fran-

May consolidate.

Proviso as to competing lines.

Agreement for consolidation.

Proviso. chises conferred upon such two or more corporations: Provided however, That any power, right, franchise, privilege or immunity possessed by either or any of the consolidating companies of a kind which would not be possessed by a company organizing originally under the provisions of this act as now existing or as hereafter amended, shall be utterly lost, annulled and abrogated; and such new corporation shall be subject to all the restrictions and perform all the duties imposed by this act as now existing or as hereafter amended as if it were a corporation originally organized thereunder. Such agreement of the directors shall not be deemed to be the agreement of the said two or more corporations until after it has been submitted to the stockholders of each of said corporations separately at a meeting thereof, to be called upon a notice by publication at least once in each week for four successive weeks in one of the daily papers published in the city of Detroit; and some newspaper published in each county in this state through which said roads run, in which a newspaper shall be published; the first publication to be at least sixty days before the time specified for said meeting, and signed by the secretaries of each of said companies proposing to consolidate, stating the purpose and object of said meeting, and has been sanctioned by such stockholders by a vote of a majority in interest of the stockholders, in person or by proxy, each share of capital stock being entitled to one vote; and when such agreement of the directors has been so sanctioned by each of the meetings of the stockholders separately, in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said two or more corporations. A copy of said contract or consolidation agreement filed in pursuance of this act or of an act entitled "An act to provide for the incorporation of railroad companies," approved February twelfth, one thousand eight hundred and fifty-five, and the acts amendatory thereof, and the acts amending or revising the same, with the secretary of state, and certified by him to be a copy, shall in all courts and places be presumptive evidence of the consolidation of said two or more companies, and of all the facts therein stated. And provided, That any railroad bridge company, or any railroad tunnel company, which may be organized under this act to bridge or tunnel the Detroit river, or the St. Clair river, or any of the waters in the jurisdiction of this state, shall have a right to consolidate the stock, property and assets of said company with the stock, property and assets of any connecting railroad company or of any company organized or to be organized under the laws of this state, or which may be created under the laws of any adjacent state or country, to construct any such bridge or tunnel therewith, upon such terms, conditions and agreements as may by the said corporations be

Agreement to be submitted to stockholders.

Notice of meeting of stockholders for concurrence.

How published.

Contents of notice.

Certified copy to be evidence of consolidation.

Proviso as to bridging or tunneling certain waters.

deemed just and equitable: Provided, That every such bridge or tunnel shall be so constructed as not to be a material obstruction to navigation. Proviso as to obstruction of navigation.

Am. 1899, Act 266.

PROCEEDINGS LEGALIZED: Act No. 160 of 1875, p. 190, provides: "That all elections of directors for consolidated railroad companies held before the consolidation agreement shall have been filed with the secretary of state, shall in all suits and proceedings be of the same force and effect as if the said election had been held after the filing of said agreement: Provided, Said election was held after the consolidation agreement was sanctioned by the stockholders."

CONSOLIDATION: The state may authorize two or more existing corporations to associate together and organize themselves into a new corporation, with the same full power that it exercises when it incorporates individuals.—State Treas. v. Aud. Gen., 46/233. But the statutes must be strictly complied with in consolidation.—Peninsular Ry. Co. v. Tharp, 28/506; M. C. & L. M. R. Co. v. Drinker, 30/124; Rodgers v. Wells, 44/411. Stockholders must be notified.—Rodgers v. Wells, 44/411; Tuttle v. M. A. L. R. Co., 35/247; Wells v. Rodgers, 60/525. Proof of publication of notice.—Brown v. Dibble's Est., 65/523. No change in the original companies not in accordance with the essential requirements of the statute will bind a dissenting stockholder.—Tuttle v. M. A. L. R. Co., 35/247. The consolidated company succeeds to the powers and privileges of the old companies.—C. & N. W. Ry. Co. v. Aud. Gen., 53/91. And becomes subject to their liabilities.—Dewey v. T., A. A. & N. M. Ry. Co., 91/351. Where companies of different states consolidate, severally bring to the new entity the powers and privileges already possessed, and the consolidated company simply exercises in each jurisdiction the powers the corporation chartered there had possessed and succeeds there to its privileges.—C. & N. W. Ry. Co. v. Aud. Gen., 53/91. Statutes authorizing consolidation of railroads must be substantially complied with in order to effect the formation of a new corporation.—Pingree v. M. C. R. Co., 118/314. The Michigan Central Railroad Co., by availing itself of special statutory authority to make business arrangements with other companies, so as to operate their roads as branch lines, did not effect a consolidation therewith, so as to become merged in a new corporation.—Id.

(173) § 6255. SEC. 30. Before the agreement mentioned in the preceding section twenty-nine shall have any force or effect, and before filing a duplicate thereof in the office of the secretary of state, the articles of consolidation shall be submitted to a board, consisting of the attorney general, commissioner of railroads (railroad commissioner), and secretary of state, to be examined by such board, to ascertain whether the proposed consolidation will be in accordance with the constitution and laws of this state, and if found in accordance therewith, said board shall approve the same. Upon such approval by said board a duplicate of the articles of agreement shall be filed in the office of the secretary of state; the said two or more corporations mentioned or referred to in this section, shall be merged in the new corporation provided for in such agreement, to be known by the corporate name therein mentioned, and the details of such agreement shall be carried into effect as provided therein. And all and singular the power, rights and franchises of each and all of such two or more corporations, parties to such agreement, of a kind which would be possessed by a company organized under the provisions of this act as now existing or as hereafter amended, and all and singular their rights and interest in and to every species of property and things in action, shall be deemed to be transferred to and vested in such new corporation without any other deed or transfer; and such new corporation shall hold and enjoy the same, together with all the Articles to be submitted to board, etc. Articles to be filed with secretary of state. Power, rights, etc., of consolidated corporations.

Proviso as to
rights of cred-
itors, etc.

Further
proviso.

right of way, and all other rights of property, in the same manner and to the same intent, as if said two or more corporations, parties to such agreement, should have continued to retain the title and transact the business of such corporations save as above provided, and the titles and real estate acquired by either of said two or more corporations shall not be deemed to revert or be impaired by means of anything in this act contained: Provided, That all rights of creditors and all liens upon the property of either of said corporations, parties to the said agreement, shall be and hereby are preserved unimpaired, and the respective corporations shall continue to exist so far as may be necessary to enforce the same: And provided further, That the debts, liabilities and duties of either company shall thenceforth attach to such new corporation, and be enforced against the same, to the same extent, and in the same manner as if such debts, liabilities and duties had been originally incurred by it.

APPROVAL OF CONSOLIDATION: As to sufficiency of proof of approval, see *Brown v. Dibble's Estate*, 65/524.

MERGER: Upon approval and the filing of a duplicate of the articles of agreement in the secretary of state's office, the merger takes place.—*Peninsular Ry. Co. v. Tharp*, 28/507; *M. C. & L. M. R. Co. v. Drinker*, 30/126.

RIGHTS: OBLIGATIONS: Rights and causes of action of the original companies pass to the new one.—*Swartwout v. M. A. L. R. Co.*, 24/404. And the new company may collect subscriptions to stock made to the old companies.—*Monroe v. F. W., J. & S. R. Co.*, 28/272; *Wells v. Rodgers*, 60/531. The "debts, liabilities and duties" of a railroad company, including their liability for injuries, attach to any company in which it is merged by consolidation.—*Batterson v. C. & G. T. Ry. Co.*, 53/125. As to the status of the original companies after consolidation, see *L. S. & M. S. Ry. Co. v. People*, 46/193; *C. & N. W. Ry. Co. v. Aud. Gen.*, 53/79. Declaration in action against consolidated company for claim against old company.—*M. H. & O. R. Co. v. Langton*, 32/251.

LEGALITY OF CONSOLIDATION: See *C. & G. T. Ry. Co. v. Miller*, 91/166, 183. In the absence of proof to the contrary, it will be presumed that a company doing business as a consolidated company has taken the necessary steps to effectuate consolidation.—*D., L. & L. M. R. Co. v. Starnes*, 38/698. And the regularity of the consolidation will not be inquired into collaterally.—*Swartwout v. M. A. L. R. Co.*, 24/389. But a stock subscriber may contest the validity of the consolidation when sued for his subscription.—*Tuttle v. M. A. L. R. Co.*, 35/247; *M. C. & L. M. R. Co. v. Drinker*, 30/124. It is not enough that the consolidated company is a corporation de facto, but the right to sue must be shown to have been acquired by a valid consolidation.—*Id.* And the assignee of a consolidated company must also show a valid consolidation to substantiate his claim.—*Rodgers v. Wells*, 44/411.

May con-
struct
bridges, etc.

Privilege of
bridge and
tunnel
companies.

(174) § 6256. SEC. 31. It shall be competent for all railroad bridge companies and railroad tunnel companies organized under this act, respectively, to construct bridges over or tunnels under the waters of this state, to extend the railroad track or tracks which they may lay upon any bridge or through any tunnel which they may construct, so as to connect with any railroad whose business may pass through it, and for that purpose may acquire the right of way over or under or across any private property, in the same manner as herein provided for acquiring the right of way for railroads, and may, with the authority of the common council of any city, acquire the right to cross and use such portion of any street as may be found necessary; and to raise money, shall have the same authority as is herein conferred upon rail-

road companies to issue and sell bonds, and secure their payment by deeds of trust; and for all such purposes the said railroad bridge companies and railroad tunnel companies shall have the same rights as railroad companies organized under this act.

Am. 1899, Act 266.

(175) § 6257. SEC. 32. Any such bridge or tunnel company shall have the right to negotiate with any railroad company which may connect with its bridge or tunnel for the purpose of obtaining aid in the construction of its work, and such railroad company shall have full power and authority to grant such aid upon such terms as may be agreed upon by both parties, which aid may be given by subscription to capital stock, or by guaranteeing bonds, or by both, or by lease and agreement to pay rent, or in any other form which shall be found most effectual to accomplish the purpose and enable said companies to procure the requisite means.

Aid of same from railroad companies.

Am. Id.

(176) § 6258. SEC. 33. The said company shall have the right to charge such fair compensation for the use of its said road and bridge or tunnel by the railroad companies or horse railroad companies whose business shall pass along, over or through it, as shall be found by experience sufficient to enable them to pay: First, all the expenses of keeping the works in repair and interest upon the money borrowed for the construction thereof, and dividends not exceeding ten per cent upon their capital stock, and such additional sum as may furnish a sinking fund each year, not to exceed five per cent of the amount of its bonded debt, for the purpose of gradually extinguishing the same.

Compensation for use of tunnel and bridge.

Am. Id.

(177) § 6259. SEC. 34. All railroad companies whose tracks may connect with such tunnels or bridges shall have the right to send their business through or over them, respectively, upon such terms as shall be just and fair, and the charges for the passage of freight and passengers from all railroads shall be the same, and with no discrimination in favor of or against the business of any connecting road.

Right of companies connecting with tunnel or bridge to use of same.

Am. Id.

(178) § 6260. SEC. 35. Whenever two railroad companies shall, for a portion of their respective lines, embrace the same location of line, they may, by agreement, provide for the construction of so much of said lines as is common to both of them by one of the companies, and for the manner and terms upon which the business thereon shall be performed. Upon the making of such agreement, the company

Two companies may agree on construction of road on line common to both.

Company not
hereby re-
leased from
charter obli-
gation to
build, etc.

Terms on
which cross-
ing to be
made, how
determined.

that is not to construct the part of the line which is common to both, may alter and amend its articles of association so as to terminate at the point of intersection, and may reduce its capital to a sum not less than eight thousand dollars for each mile of the road proposed to be constructed in such amended articles of association. Nothing in this act shall be construed to release any chartered company from building any line of road, which by its charter it is obligated to build, or to transfer to any other company, by virtue of this section or any agreement made in pursuance thereof, such obligation.

(179) § 6261. SEC. 36. If after the determination, as provided for in section seven of this act, the companies cannot agree upon the terms upon which the said crossing shall be made, the company so desiring may acquire the right to make the same by condemnation in the same manner as prescribed by the act for obtaining title to real estate or other property and as provided in this act therefor.

Union Depot Co. v. Backus, 92 / 50.

As to the constitutionality of the amendment of 1883, see T., A. A. & N. M. Ry. Co. v. D. L. & N. R. Co. 62 / 564. As to crossings under that amendment, see 61 / 507; 63 / 676; 64 / 350.

RAILROAD CROSSING: In the absence of an agreement between the companies, condemnation proceedings must be taken as in other cases; and an effort to obtain the right to cross by agreement is a condition precedent.—T., A. A. & N. M. Ry. Co. v. D., L. & N. R. Co., 62 / 564. As to the taking of railroad property for public use, see note, "Railroad company's property," to section 161 ante. The crossing can be made only with the approval of the railroad crossing board.—See note, "Action of board," to section 150 ante; T., A. A. & N. M. Ry. Co. v. D., L. & N. R. Co., 63 / 676. Requisites of petition.—T., A. A. & N. M. Ry. Co. v. D., L. & N. R. Co., 62 / 564; F. & P. M. R. Co. v. D. & B. C. R. Co., 64 / 350. What must be included in damages and compensation and how determined.—T., A. A. & N. M. R. Co. v. D., L. & N. R. Co., 62 / 564; T., A. A. & N. M. R. Co. v. D., L. & N. R. Co., 63 / 645; F. & P. M. R. Co. v. D. & B. C. R. Co., 64 / 350. See, also, People v. L. S. & M. S. Ry. Co., 52 / 277; Grand Rapids v. G. R. & I. R. Co., 58 / 641; C. & G. T. Ry. Co. v. Hough, 61 / 507. The company making the crossing must pay the expense.—T., A. A. & N. M. Ry. Co. v. D., L. & N. R. Co., 62 / 564.

Mortgage
sales, etc.

Rights of
purchasers.

(180) § 6262. SEC. 37. It shall be competent and lawful for the trustees, in any deed of trust or mortgage of and upon any railroad, railroad bridge or railroad tunnel, in case of the inability of said company or its default in the payment of the principal or interest money secured thereby, in pursuance of any power of sale contained therein, to offer the same for sale, according to the power, and in pursuance of its terms, and on such sale to execute a deed of the premises sold, which said deed, duly executed, shall convey the title to the purchaser or purchasers, and authorize them to enter into possession and enjoyment thereof, as fully as may be provided in said mortgage or deed of trust; and that it shall be competent and lawful for all railroad, railroad bridge and railroad tunnel companies organized under this act, for the purpose of securing their bonds, authorized to be issued in accordance with its provisions, to execute such mortgage or

deed with such power contained therein for the sale of the property mortgaged or deeded as shall, in its judgment or the judgment of the board, be found expedient, and such power of sale in accordance therewith shall be lawful and valid.

Authority of companies to execute mortgages, etc., with power of sale.

Am. 1899, Act 266.

Neither the mortgagee nor the purchaser under foreclosure acquires any lien upon, or title to, a side track built by the company upon adjoining land, under an agreement that it is to become the property of the land-owner.—Spoon v. C. & W. M. Ry. Co., 86/309. This section excepts railroad mortgages from the general statute relating to the foreclosure of real estate mortgages.—Ten Eyck v. Railway Co., 114/494.

(181) § 6263. SEC. 38. All companies organized under this act shall have power, from time to time, to borrow such sums of money as may be necessary for completing, finishing, equipping or operating their road, bridge or tunnel, or any part thereof, or for paying any indebtedness necessarily incurred for completing, finishing, or operating their road, bridge or tunnel, or any part thereof; and to issue and dispose of their bonds or obligations for any amount necessarily borrowed for such purpose, for such sums and for such rate of interest, not exceeding ten per cent, as they may deem advisable, and to mortgage their corporate property and franchises and the income thereof, or any part thereof, to secure the payment of any debt contracted or to defray any expenditure by the company for the purpose aforesaid. And the directors of any such company may confer on any holder of any such bond or obligation the right to convert the same into the stock of said company at any time not exceeding ten years from the date of said bonds, on such terms and under such regulations as the company may see fit to adopt; and said company may sell their bonds or obligations, either within or without this state, at such rates and prices as they may deem proper. Any such company may at any time, with the concurrence of the stockholders representing a majority of the stock, a majority in value of stockholders, at any annual meeting, or at any special meeting of the stockholders called for that purpose, increase its capital stock, or provide for the issue of preferred or secured stock for the purpose aforesaid, upon such terms and conditions as to them may seem meet. In case the capital stock of any such company or corporation organized under this act shall be found insufficient for constructing or operating its road, bridge or tunnel, or for building a double track, repairs or other improvements to facilitate the transportation of persons or property, such corporation may, with the concurrence of two-thirds in value of all its stock, increase its capital stock from time to time to any amount required for the purpose aforesaid: such increase shall be by a vote in person or by proxy of two-thirds in amount of all the stock of such corporation at a meeting of the stockholders called by the direct-

Companies may borrow money, issue bonds, mortgage property, etc.

Bonds, convertible into stock within ten years.

Increase of capital stock.

Two-thirds vote of stock necessary to increase.

Notice of
meeting to
stockholders
therefor.

ors of the corporation for such purpose, by giving notice in writing to each stockholder, to be served personally, or by depositing the same in a post office, directed to the post office address of each of said stockholders severally, with necessary postage for the transmittal of the same prepaid, at least sixty days prior to the day appointed for such meeting, and by advertising the same in some newspaper published in each county through or into which the said road, bridge or tunnel shall run or be intended to run, or if a newspaper shall not be published therein, then such meeting shall be advertised in two newspapers published in the city of Detroit, at least sixty days prior to the day appointed for such meeting; and such notice shall state the time and place of the meeting, the object thereof, and the amount to which it is proposed to increase such capital stock, and at such meeting the corporate stock of such corporation may be so increased by a vote of two-thirds in amount of the corporate stock of such corporation, to an amount not exceeding that mentioned in the notice so given.

Am. Id.

Agreement be-
tween compa-
nies for the
common use
of tracks and
depot grounds.

(182) § 6264. SEC. 39. In case one or more railroad companies shall use a common track into any of the cities or villages of the state, and it shall be found expedient to use a common or joint station ground therein, it shall be competent and lawful for the said companies whose interests shall be common in such track or tracks or station grounds, to enter into such agreements for such purpose as may become necessary for the joint use of the same, and such agreements, duly made and approved by the boards of directors of the two or more companies, shall be valid and binding upon all the parties thereto; and in case it shall be found necessary at any time to enlarge the station grounds at any such city or village for the convenience of said companies jointly using the same, it shall be competent and lawful for either one of the companies to negotiate for and obtain such grounds as may be needed for that purpose, and if they cannot be obtained by purchase, then either company may acquire the same under the provisions of the act regulating the mode and manner of obtaining lands necessary for the construction of railroads and stations; and in such case it shall be competent and lawful for such grounds so obtained to be used in common, and the companies so using may contribute, in such manner as may be agreed upon between them, the money to pay for the same; and such land, when obtained by purchase or by appraisal and condemnation under the provisions of this act, may and shall enure for the common benefit of all companies who by mutual arrangement and agreement shall be entitled to use them as a part of the common station ground as fully as if they had been acquired by a joint purchase by all of said companies.

Enlargement
of station
grounds.

(183) § 6265. SEC. 40. Where two or more railroads terminate or connect in the same city or town; each shall, for a reasonable compensation, provide upon its road at such terminus or connection, suitable depot accommodations for the passengers or merchandise of the other road terminating or connecting with it, and shall receive the same in the manner it receives and delivers its own passengers and freight, and at the rates provided by law. If the corporations cannot agree upon the terms and conditions upon which such accommodations shall be furnished and the business transacted, the commissioner of railroads (railroad commission) shall determine the rate of compensation to be paid for the depot accommodations required for the proper reception and delivery of such passengers and merchandise over, and other business upon and connected with said roads in which they are jointly interested; and the manner in which the business shall be done, and apportion to the corporations their respective shares of the expenses, receipts, and income of the same; and the award of the commissioner (commission) shall be binding upon the corporations.

Depot accommodations at junctions and joint termini.

Commission to determine rate of compensation therefor, when corporations cannot agree.

(184) § 6266. SEC. 41. All railroad corporations shall grant equal facilities for the transportation of passengers and freight to all persons, companies or corporations, without discrimination in favor of any individuals, companies or corporations, and shall, at all points of connection or intersection with the roads of other corporations, unite with such corporations in establishing and maintaining suitable platforms and station houses for the convenience of passengers desiring to transfer from one road to the other and for the transfer of baggage or freight, whenever the same shall be desired by either corporation or ordered by the railroad commission; the expense of constructing and maintaining such station house and platforms shall be paid equally by such corporations. Where it is practicable the railroad commission may, upon application, require railroad corporations to so unite and connect the tracks of said several corporations as to permit the transfer from the track of one corporation to the other of loaded and unloaded cars designed for transportation upon both roads. No railroad corporation shall in any manner discriminate in its rates of freight tariff, in favor of any individual, company or corporation doing business over its line of road, and shall grant the same rights and privileges to all shippers, subject to the same rates and classification, without rebate or any other special privilege or rate not extended to all other shippers in the same class, who ship a like quantity or quantities. Any railroad corporation refusing to comply with any of the provisions of this section shall be liable to a penalty not exceeding five hundred dollars.

Railroads to grant equal transportation facilities.

To maintain joint waiting houses, etc.

Expense.

To connect tracks.

Discrimination.

Penalty.

the road. It must be construed to include also not only the receiving of passengers and freight at its depots, but, as well, the receiving of them by other "persons, companies or corporations" at the point where the carriage ends. The access to its depots must be free and equal to all, whether it be to take passage or leave the train. There must be no discrimination among "busses or hacks."—*Hack & Bus Co. v. Sootsma*, 84/198. But a railroad company may make all needful reasonable rules and regulations.—*Id.* And may assign places for each hackman and exclude those who occupy places not assigned to them.—*Cole v. Rowen*, 88/219.

Land, may
condemn, etc.

(185) § 6267. SEC. 42. Any railroad company, any railroad bridge company or any railroad tunnel company organized under this act shall possess the power to acquire, either by purchase or condemnation, and to own the same, an amount of land at any and all places on the line of its railroad or in the vicinity of its bridge or tunnel sufficient to afford the necessary yards, terminals and freight and passenger depot accommodations for its own business and the business of any companies operating a railroad, bridge or tunnel at the same place, with which it may make an agreement to furnish such accommodations, and also for the necessary rights of way to afford such companies access thereto.

Am. 1911, Act 33.

In numbering the added sections, 43 was skipped.

How may ac-
quire prop-
erty of other
corporations.

(186) § 6268. SEC. 44. When any part of the land of any railroad company in this state, in or adjacent to its depot grounds is not in actual use for depot or other purpose pertaining to the operation of a railroad, and such land is not needed by said railroad company for the purpose of a depot or other terminal facilities, it shall be lawful for any other railroad company organized as aforesaid, needing such land for the purpose of a depot or terminal facilities, to acquire the same in the same manner as may now be done for such purpose from individuals. The question of actual use and of necessity for the aforesaid purposes by said railroad company owning and not using said land, shall be determined in addition to other questions as provided by law in cases of condemnation of land for the purpose aforesaid, and the same proceedings in all respects, as near as may be, shall be had for the aforesaid purpose as now provided by law where land is acquired for such purpose from individuals.

Union Depot Co. v. Backus, 92/51.

Powers of rail-
roads to run,
etc., steam-
boats, etc., in
certain cases.

(187) § 6269. SEC. 45. Any railroad company in this state having either, or both, of its termini at the shore of one of the navigable lakes or streams through which the boundary line between this state and other states, or the Dominion of Canada passes, where physical connection between its road and other railroads without the state is impracticable by reason of such intervening navigable body of water, may own and operate on such body of water such number of steamboats, barges, or vessels as the traffic of passengers and freight between it and such other railroads shall render nec-

essary, or it may loan money to any person or corporation in aid of the construction of steamboats, barges, or other vessels to be so operated.

Fletcher v. Township of Alcona, 72/23. A stock of groceries, kept by a railroad company to furnish supplies for the crews and passengers of a line of steamboats operated by it under authority of this section, is not subject to taxation under the general tax law.—P. M. R. Co. v. City of Ludington, 133/397.

(188) § 6270. SEC. 46. That any railroad company or corporation owning or operating any railroad wholly or partly within this state, and which has received aid from private individuals along its line of road in the construction of the same, shall maintain and run at least one passenger train each way over that portion of its road within this state every week day, unless prevented by accident or the elements, which train shall not be used for the transportation of freight, except express or baggage freights, and such railroad company shall furnish sufficient accommodation with such train for the transportation of all such passengers as shall within a reasonable time previous thereto be ready at the several stations on its railroad, at the junction of other railroads, and at such stopping places as may be established for receiving and discharging way passengers, and shall take, receive, transport, and discharge such passengers at, from and to such stations, junctions and places, upon payment, or tender of payment, of the fare legally authorized therefor, if such payment shall be demanded. Any railroad company or corporation refusing to comply with any of the provisions of this section shall be liable to a penalty not exceeding five hundred dollars for each and every offense.

Daily train service.

Penalty for violating provisions of this act.

(189) § 6271. SEC. 47. All railroad companies or other corporations or individuals owning or operating any railroad passing near any state institution located one mile or more from a regular station, which institution or railroad company has or shall hereafter put in sidings suitable for the receipt and shipment of state property at a convenient point near said institution, or have established or shall hereafter establish a passenger station for the accommodation of officers and employes of the state, and other persons under state control, shall at all times furnish such reasonable service and facilities for the receiving and shipment of freights [freight] and for the accommodation of officers and employes of the state and persons whom they may have in charge in getting on and off passenger trains as the needs of the institution may demand. This act shall not be construed as requiring any railroad company to stop its trains to let passengers on or off who have come from, or are destined to a point not exceeding three miles from said institution. If the officers of the institution and the railroad company cannot agree as to what is reasonable service to be performed on the

Railroads passing near state institutions, requirements of.

part of the railroad company, then the same shall be decided by the commissioner of railroads (railroad commission), upon application to him by the officers of the institution or the superintendent or manager of the railroad company.

Penalty for neglect.

(190) § 6272. SEC. 48. Every railroad company neglecting to comply with the provisions of this act shall be liable to the state in a penalty of fifty dollars for each day that its neglect shall continue; to be collected in an action for debt to be brought by the attorney general or the prosecuting attorney of the county upon the request of the commissioner of railroads (railroad commission) in that behalf.

To be under general law, etc.

(191) § 6273. SEC. 49. Every railroad and railway company operating a railroad in whole or in part in this state which company may have been by means of a consolidation under any general or special law of this state, or by means of a mortgage foreclosure and sale and reorganization, under any general law of this state, is hereby declared to be in all respects subject to the general laws of the state respecting railroads as now existing or as hereafter amended; and any franchise, right, power, privilege, immunity or exemption claimed by any such railroad or railway company of a kind which would not belong to a company organized under the general railroad laws of the state as now existing or as hereafter amended is hereby annulled and abrogated, and every such company shall be subject to all the restrictions and perform all the duties now imposed by the general laws or which may hereafter be imposed upon railroad companies.

As to taxation.

(192) § 6274. SEC. 50. That in case any such railroad or railway company may have been in the past paying a tax different from that imposed upon railroads by the general law, such company may continue to pay such tax or a ratable proportion thereof up to the first day of July, one thousand eight hundred and ninety-two; but thereafter every such company shall pay a tax in the manner and in the amount now provided by the general laws relating to railways.

Section 51 was added to this article by Act No. 238 of 1901. In the case of *Ecorse Township v. Jackson, Ann Arbor & Detroit Ry.*, 153 / 399, the court held that the act was "unconstitutional and void" for the reason that it attempted to graft upon the general railroad law a section under which corporations organized under it could enjoy all the rights and benefits of street railways, and acquire franchises in the public highways without limit as to time or control by local authorities.

ARTICLE III.—TAXATION.¹

Commission to certify taxes to auditor general.

(193) § 6275. SECTION 1. The commissioner of railroads (railroad commission) shall, on or before the fifteenth day of May, eighteen hundred and seventy-nine, and on or before the fifteenth day of May in each year thereafter, make and file with the auditor general a computation of the amount of tax which will become due on the

¹For the method of taxation of the property of railroad companies, adopted by later legislation, see chapter VII of this compilation.

first of July, from each railroad company liable to pay taxes under the provisions of section three of this article, which computation shall be based upon the report of such railroad company for the preceding year, required to be made to the commissioner of railroads (railroad commission); and in case any of said railroad companies shall fail to make such report to the commissioner of railroads (railroad commission), as provided by law, then the provisions of section two of this article shall apply as fully as though such report was required to be made direct to the auditor general.

This and the next four sections simply impose the tax and provide for the lien, but provide no method of collection.—Aud. Gen. v. L. G. & M. R. Co., 82/430-1. This section is directory only, as to the time of computation, and a computation made after the specified date, by the successor of the commissioner who should have made it, based upon the proper report of the company, is valid.—M. & G. R. R. Co. v. Aud. Gen., 115/291. A company incorporated in 1834 under a special charter that was silent as to taxation was liable to specific taxation under sec. 5, chap. 21, R. S. 1846.—People v. D., G. H. & M. Ry. Co., 169/72.

(194) § 6276. SEC. 2. Any such company which shall neglect to make such report, or which shall wilfully make a false report, shall be liable to a penalty of one thousand dollars; and it shall be the duty of the auditor general, and he is hereby required, in case any such corporation incurs the penalty aforesaid, to forthwith issue his warrant for the collection of the same in the same manner, and to levy and collect the same in all respects as herein provided for the collection of taxes against such corporation; and the collection of such penalty shall not absolve the corporation from the obligation to make such report, but it shall still be its duty to make the same, and a wilful neglect or refusal to do so may be cause for a forfeiture of the corporate franchises.

Penalty for neglect.

Collection of same does not discharge obligation to report.

(195) § 6277. SEC. 3. Every railroad company and union railroad station and depot company owning or operating any railroad situated in whole or in part in this state, shall, on or before the first day of July in each year, pay to the state treasurer, on the statement of the auditor general, a specific tax upon the property and business of such railroad corporation operated within the state, which tax shall be computed in the following manner, [viz.], namely: Upon all such gross income not exceeding two thousand dollars per mile of road actually operated within this state, two and one-half per cent of such gross income; upon such gross income in excess of two thousand dollars and not exceeding four thousand dollars per mile, three and one-fourth per cent thereof; upon all such gross income in excess of four thousand dollars and not exceeding six thousand dollars per mile, four per cent thereof; and upon all such gross income in excess of six thousand dollars per mile, and not exceeding eight thousand dollars per mile, four and one-half per cent thereof; and upon all such gross income in excess of eight thousand dollars per mile of the road so operated, five per cent thereof; that all gross income of union railroad station

Specific tax to be paid by railroad companies.

Rate of taxation.

When railroad
lies partly in
other states.

Taxes so paid
to be in lieu
of all other
taxes, except
real estate.

and depot companies whose earnings are in excess of twenty thousand dollars per mile shall pay on all such gross incomes in excess of twenty thousand dollars per mile of road so operated, ten per cent thereof. And when the railroad lies partly within and partly without this state, *prima facie*, the gross income of said company from such road for the purposes of taxation shall be on the actual earnings of the road in Michigan, computed by adding to the income derived from the business transacted by said company entirely within this state, such proportion of the income of said company arising from interstate business, as the length of the road over which said interstate business is carried in this state bears to the entire length of the road over which said interstate business is carried. The taxes so paid shall be in lieu of all other taxes upon the properties of such companies, except such real estate as is owned and can be conveyed by such corporations under the laws of this state, and not actually occupied in the exercise of its franchises, and not necessary or in use in the proper operation of its road, but such real estate so accepted shall be liable to taxation in the same manner, and for the same purposes, and to the same extent, and subject to the same conditions and limitations as to the collection and return of taxes thereon, as is other real estate in the several townships or municipalities within which the same may be situated.

People v. M. S. & N. I. R. Co., 4/398; M. S. & N. I. R. Co. v. Aud. Gen., 9/448; M. H. & O. R. Co. v. Marquette, 35/504; L. S. & M. S. R. Co. v. People, 46/193; St. Treas. v. Aud. Gen., 46/224; C. & N. W. Ry. Co. v. Aud. Gen., 53/83; Aud. Gen. v. R. Co., 82/431; M. & G. R. R. Co. v. Aud. Gen., 115/291. Assessment for local improvements.—L. S. & M. S. Ry. Co. v. Grand Rapids, 102/374; D., G. H. & M. Ry. Co. v. Grand Rapids, 106/13. The expression, "in lieu of all other taxes," does not preclude the levy of special assessments for local improvements. But terminal property cannot be sold for non-payment of such assessments.—Id. Property of a railroad company constituting a part of its terminals and depot grounds, necessarily used in the operation of its roads and the exercise of its franchises, is exempt from general taxation.—Aud. Gen. v. Flint & P. M. Ry. Co., 114/682; Manistee & G. Rapids Ry. Co. v. Aud. Gen., 115/291. The amendment of 1897, bringing union railroad station and depot companies under the general railroad law as to taxation, is constitutional.—Union Depot Co. v. Com'r of Railroads, 118/340. And it does not provide for double taxation.—Id. In determining the miles of railway operated by a union railroad station and depot company, for the purpose of taxing its gross income per mile, there should be a separate measurement for each railroad running into its depot, if it has as many tracks as roads, no two of which are used exclusively by any one road.—Id. A statute exempting railroads partially from taxation does not create a contract but confers only a gratuitous privilege, revocable at the pleasure of the state.—Manistee, etc., R. Co. v. R. R. Com'r, 118/349. Sums received by a railroad company for switching, rental of tracks and terminals and interest on loans and deposits, are taxable as part of its gross income.—Detroit, etc., R. Co. v. R. R. Com'r, 119/132; C. & W. M. Ry. Co. v. R. R. Com'r, 119/135. In computing the gross income per mile for purposes of taxation, tracks over which the company runs its trains, but which are operated as part of the system of another company, should be excluded.—Detroit, etc., R. Co. v. R. R. Com'r, 119/132. A stock of groceries kept to furnish supplies for the crew and passengers of a line of steamboats operated by a railroad company is exempted from taxation by the provisions of this section.—P. M. R. Co. v. Ludington, 133/397. Property exempt.—G. R. & I. Ry. Co. v. Grand Rapids, 137/587. Mandamus will not issue to compel the auditor general to cancel a sale of lands of a railroad company for the reason that they were not locally taxable, where it appears that a part of the lands were not used for railroad purposes and therefore not exempt, and the company has not paid, or offered to pay, any portion of the tax.—G. R. & I. R. Co. v. Aud. Gen., 144/77.

(196) § 6278. SEC. 4. In case any railroad shall have been, or shall hereafter be, conveyed by way of lease, or any other agreement by which it shall be worked or operated by another company, under the provisions and authority contained in this act, with the obligation or right on the part of the company taking or holding a lease, or other working agreement, to pay the taxes on the leased road, it shall be competent and lawful for the company so obligated, or having the right to pay the said tax, to set forth the facts, and the extent of the road so leased, and the amount and description of the property so held by it, in a statement to the auditor general; and thereupon the taxes to be assessed upon the railroad of the company, or portion of which, or the whole of which has been so leased, shall be assessed against the lessee, which shall be notified of the same; and in case a portion only of said road has been so leased or conveyed, the taxes shall be justly apportioned by the auditor general, so that the said lessee shall be required and bound only to pay the proper portion thereof, to be assessed against the property in its possession and control.

Assessment of taxes upon roads that are leased.

(197) § 6279. SEC. 5. This state shall have a lien upon all railroads therein, and their appurtenances, and stock therein, for all penalties, taxes, and dues which may accrue to the state from the companies owning or operating the same, which lien of the state shall take precedence of all demands, judgments, assignments by warranty deed, or otherwise, or decrees against said companies, and each citizen of the state shall have a lien upon all the personal property of said company, for all penalties, dues, and demands against any such company to the amount of one hundred dollars, originally incurred or contracted within this state, which, after said lien of the state, shall take precedence of all other debts, demands, judgments, assignments, by warranty deed, or otherwise, or decrees, liens, or mortgages against said company.

Lien of state upon roads for taxes, penalties, etc.

Lien of citizens.

From the phrasology it is clear that the legislature intended the personal property of the corporation to be included within the description of the property upon which the state has a paramount lien.—Aud. Gen. v. Railroad Co., 82 / 431.

ARTICLE IV.—POLICE REGULATIONS.¹

(198) § 6280. SECTION 1. On and after the thirty-first day of October, eighteen hundred and seventy-three, [no] on regular passenger trains shall be run in this state without an air brake or some equally effective device for controlling the speed of the trains, to be approved by the commissioner of railroads (railroad commission), which may be applied by the engineer to each car composing the train, and which shall at all times be kept in effective condition of repair and ready

Air brakes upon passenger trains.

¹For further police regulations, see Chapter IX.

Locomotives to be equipped with driver and tender brake, etc.

for use at the discretion of said engineer. And after the first day of October, one thousand eight hundred and ninety, all locomotive engines and tenders used on the railroads [of] in this state shall be equipped with a suitable driver and tender brake of some pattern to be approved by the commissioner of railroads (railroad commission), which said device shall be at all times maintained in effective condition of repair and ready for use, and from and after the said last mentioned date [no] on mixed trains, [composed] composing partly of passenger and partly of freight cars, on which the air brakes hereinbefore mentioned, provided and required, cannot be applied by the engineer to each passenger car which shall be run in this state for the transportation of passengers, unless the engine and tender on such train shall be equipped with a suitable driver and tender brake, as hereinbefore provided; and every company, person or corporation owning or operating a railroad in this state, which shall permit any trains to be run upon such roads without being equipped with brakes, as provided for in this section, shall forfeit for every train so run the sum of one hundred dollars, for the recovery of which such company, person or corporation shall be liable in an action brought by the attorney general, or the prosecuting attorney of any county in this state, upon the application of the commissioner of railroads (railroad commission), in behalf of the people of the state, the penalty, when recovered, to be paid into the state treasury, and said companies, persons or corporations shall also be liable for all damages which shall be sustained by any person by reason of neglect or refusal to comply with the provisions of this law.

Penalty.

AIR BRAKES: The strict requirement of air brakes, laid down as indispensable on regular passenger trains, assumes there will be such vigilance as will enable trains to be checked at the first appearance of danger. This requirement is confined to passenger trains.—*Marcott v. M., H. & O. R. Co.*, 47 / 8.

Flagman, gate or bridge at street crossings.

(199) § 6281. SEC. 2. On and after July thirty-first, eighteen hundred and seventy-three, every company, person, or corporation owning or operating a railroad within this state, shall construct and maintain a gate or gates, or bridge, or maintain a flagman to signal trains at every highway or street crossing on the line of such road, where the same shall be required by the commissioner of railroads (railroad commission), as hereinafter provided. Any company, person, or corporation neglecting or refusing to construct or maintain such gate or gates, or bridge, or to maintain such flagman where so required as aforesaid, shall forfeit for every such neglect or refusal the sum of one hundred dollars, and the further sum of ten dollars for every day while such neglect or refusal shall continue.

Forfeiture for not maintaining.

FLAGMEN: When flagmen are required at crossings.—*Haas v. G. R. & I. R. Co.*, 47 / 401; *Battishill v. Humphreys*, 64 / 494; *Guggenheim v. L. S. & M. S. Ry. Co.*, 66 / 162. See *Staal v. G. R. & I. R. Co.*, 57 / 239. As to

duty and responsibility of flagman, see *Steele v. C. & G. T. Ry. Co.*, 107 / 516. It is not the law of this state that at every road or street crossing in a village or city a railroad company must place a flagman.—*Freeman v. Railway Co.*, 74 / 86.

(200) § 6282. SEC. 3. Whenever, in the opinion of the commissioner of railroads (railroad commission), the public interests require that a gate be constructed and maintained at any railroad crossing, or a bridge be built over such railway at such crossing, or that a flagman be stationed and maintained at such crossing, he shall give to the superintendent of such railroads a written notice that the same is required; and such company, person or corporation shall construct or maintain the same within such time thereafter as said commissioner (commission) shall prescribe.

Commission to give notice that same is required.

Battishill v. Humphreys, 64 / 511. It was not held, or intended to be held, in *Battishill v. Humphreys*, that there could be no negligence, in any case, in not maintaining a flagman at a street crossing, unless ordered by the railroad commissioner.—*Freeman v. D. S. S. & A. Ry. Co.*, 74 / 86.

(201) § 6283. SEC. 4. All gates constructed under this act by requirement of the commissioner of railroads (railroad commission), shall be built in such manner, and within such time, and of such material as shall be approved by the commissioner of railroads (railroad commission), and shall be located on the highway or street on one or both sides of the railroad track or tracks, as the commissioner (commission) may deem the public safety to require, and shall be so constructed as, when closed, to obstruct and prevent any passage across such railroad or railroads from the side on which such gate may be located. At every gate heretofore or hereafter constructed at any crossing of a street or highway and a railroad there shall be a person, in charge at such hours of the day or night as the said commissioner of railroads (railroad commission) shall from time to time order and direct, and it shall be his duty to close the same at the approach of a train of cars or of a locomotive, and to keep it open at all other times; and it shall be the duty of the gatekeeper on either side of one or more tracks, to close the gate of which he is in charge on the approach of a train of cars or locomotive, on either track. For every neglect of such duty, such person, upon conviction thereof, shall pay the sum of twenty-five dollars, or be imprisoned in the county jail for the period of ninety days, or both, in the discretion of the court. The expense incurred in the erection and maintenance of the gates provided for in this section, and of the necessary gatekeepers shall be shared equally by the railroad companies alongside whose tracks the gates shall be located. Any person who shall open or raise such gate when closed or lowered, or attempt so to do, or shall attempt to gain access with teams or vehicles to such crossing while the gate is closed or lowered, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than ten nor more than twenty-five dollars,

Gates, location and construction of.

Person to be in charge of.

His duties.

Penalty for neglect.

Expense of gates.

Penalty for opening gate.

with the alternative of imprisonment in the county jail for a period of not more than thirty days.

Use of intoxicating drinks by employes prohibited.

(202) § 6284. SEC. 5. No person shall be employed as an engineer, train dispatcher, fireman, baggage-master, conductor, brakeman, or other servant upon any railroad, in any of its operating departments, who uses intoxicating drinks as a beverage; and any company in whose service any such person shall knowingly be employed, shall be liable to a penalty of five hundred dollars for every such offense, to be sued for in the name of the people of the state of Michigan.

Under this and the next section, no civil liability arises against the company for a violation; the sections being penal in their nature.—*Wallin v. Railway Co.*, 172/466.

Liability of drunken engineer.

(203) § 6285. SEC. 6. If any person shall be intoxicated while in charge of a locomotive engine, running upon the road of any such company, or while acting as the conductor of any train of cars on any such road, he shall be liable for all damages incurred or produced in consequence thereof, and shall be deemed guilty of a misdemeanor: Provided, That this shall not affect or release the railroad company from any such liability.

Proviso, company not released.

Penalty for violating rules of company.

(204) § 6286. SEC. 7. It shall be the duty of every railroad corporation in this state to furnish to each of its employes of every grade a printed or written copy of its rules and regulations relative to their respective duties, and any conductor, engineer, servant or other employe of any such railroad corporation, who shall knowingly violate any of the printed or written rules or regulations of such company, shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars, or to an imprisonment in the county jail not more than three months, or both such fine and imprisonment, in the discretion of the court.

Stanley v. Railway Co., 101/204; when rules will be deemed abrogated.—*Johnson v. Burke*, 167/349; *Jones v. P. M. R. Co.*, 168/1. Interpretation of rules.—*Jones v. P. M. R. Co.*, 168/1. General rules for operation and main lines impracticable and inapplicable on a spur used for a logging road.—*Ingersoll v. Railway Co.*, 168/380.

Coke v. M. C. R. Co., 177/260.

Putting passengers off trains.

(205) § 6287. SEC. 8. If any person shall refuse to pay his fare, or refuse to obey such regulations as may be established for the convenience and safety of passengers, it shall be lawful for the conductor of the train and servants of the company to put him off the train at any usual stopping place, or opposite any dwelling house the conductor may select.

PUTTING OFF OF TRAINS: The rule of law has been settled from the decision of *Frederick v. Railroad Co.*, 37/342 (26 Am. Rep. 531), that, as between the conductor of a railway train and the passenger, it is incumbent upon the passenger to produce as a ticket one which is apparently good upon its face, or pay the fare in cash, and that, failing to do this, the conductor has the right to eject the passenger from the car. This determination was reaffirmed in *Mahoney v. Railway Co.*, 93/612 (18 L. R. A. 335, 32 Am. St. Rep. 528).—*Brown v. Rapid Railway Co.*, 134/591. See this latter case, also, in 130/483; and *Hufford v. Railway Co.*, 53/120. But where the passenger has bought a genuine ticket, issued by the company,

and is informed that it is good by the agent, he has a right to rely upon such statement.—*Hufford v. G. R. & I. Ry. Co.*, 64/631. See notes to section 155 ante. The liability for putting a person off from the cars at a distance from any dwelling or station is purely statutory and no damages can be recovered unless the statutory provision is set out and a case made out under it by the pleadings. A carrier is not required by the common law to put out a trespasser at one place rather than in another; and, while the law will not permit a person to be exposed wantonly to peril, there is no rule which requires any consideration to be shown for the mere convenience of a wrongdoer.—*G. W. Ry. Co. v. Miller*, 19/313-14. Compare *Van Dusen v. G. T. Ry. Co.*, 97/139; *Lucas v. M. C. R. Co.*, 98/533; *Brassell v. M. St. P. & S. S. M. Ry. Co.*, 101/5; *Blumeno v. G. R. & I. R. Co.*, 101/325; *Zagelmeyer v. C. S. & M. R. Co.*, 102/214. A passenger, having in his possession evidence of the payment of his fare and refusing to produce it upon the conductor's demand for fare, in apparent good faith, cannot complain of being ejected.—*White v. G. R. & I. R. Co.*, 107/681. A passenger who tenders the legal fare and refuses to pay more may recover damages if ejected; he is not bound to pay the excess demanded and to bring action to recover it.—*Chamberlain v. Railway Co.*, 110/614. One who without permission boards a freight train not authorized to carry passengers is a trespasser; but, held, that a brakeman who ejected him in violation of the company's rules had no right to do so and that the company was not liable.—*Randall v. Railway Co.*, 113/115; *Hartigan v. M. C. R. Co.*, 113/122. What is not excessive damages for wrongful ejection.—*Chamberlain v. Railway Co.*, 122/477; *Burnham v. Railway Co.*, 168/55. Assault and battery by conductor.—*Johnson v. Railway*, 130/453. When company not guilty of negligence in ejection of passenger.—*Gaukler v. Railway Co.*, 130/666. Conditions not appearing on the face of a ticket cannot be imposed, in the absence of any proof of knowledge thereof by the passenger.—*Carvey v. D. & M. Ry. Co.*, 133/659. Measure of damages for ejection.—*Brown v. Railway Co.*, 134/591. A special deputy sheriff, in the employ of the company has no authority as such to put a passenger off the car for non-payment of fare.—*Foster v. G. R. Ry. Co.*, 140/689. Where the declaration does not put in issue the question of damages for the value of plaintiff's ticket, testimony as to amount paid therefor is not admissible.—*Pierson v. Illinois Central R. Co.*, 159/110. Excessive damages.—*Light v. D. & M. Ry. Co.*, 165/433; *Humphrey v. M. U. Rys. Co.*, 166/645. Threats to put off of train.—*Id.* When passenger not required to pay fare to avoid ejection.—*Burnham v. D., G. H. & M. Ry. Co.*, 168/55.

(206) § 6288. SEC. 9. In case it shall become necessary for the protection of the passengers on any railroad car from the violent, abusive, profane, or indecent language or conduct of any passenger, the conductor of such train is hereby authorized and empowered to arrest such passenger and remove him to the baggage car, or some safe and secure place on such train, until its arrival at some usual stopping place, where he may be put off the train and put into the custody of some proper officer for prosecution if necessary; for this purpose railroad conductors, while in charge of trains, are hereby invested with the powers of sheriffs and constables.

See sections 690-694.

Invested with the powers of sheriffs and constables.—See *Abels v. Supervisors*, 42/526; *Ames v. Pt. H., etc., Co.*, 11/139.

(207) § 6289. SEC. 10. Any person who shall, while riding in the car either of a freight or passenger or other train, on any railroad in this state, use or utter indecent, obscene, or profane language in the hearing of other passengers, or riotously or boisterously conduct himself or herself to the annoyance of other passengers, or who shall obtain any money or property from any passenger or person in such car by means of any game or device, or attempt so to do, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine not exceeding one hundred dollars, or imprisonment in the county jail for a period not

Use of abusive language, etc., by passenger cause for arrest and removal.

Penalty for disorderly conduct, etc.

Conductors
invested with
powers of
sheriff, etc.

To deliver
prisoner with
written state-
ment.

Duty of officer
to institute
complaint.

Making up
passenger
trains.

Penalty for
obstructing
the track.

Nature of the
proof.

exceeding ninety days, or both, in the discretion of the court. Railroad conductors are hereby invested with the powers of sheriffs and constable in regard to offenses under this section occurring upon trains or cars in their charge, and are empowered to arrest and detain any person violating any of its provisions until the car or train shall arrive at some usual stopping place, where a sheriff, deputy, or under sheriff of any county, or constable, or marshal, or policeman of any city or village in this state may be, to whose custody he may deliver such offender, with a written statement specifying generally in what respect such person has misbehaved; or if there be no such officer present to receive the offender, the conductor may deliver him to the ticket or freight agent at such stopping place, with such statement, who shall detain the offender in his custody, and may exercise the powers of sheriffs and constables in regard to persons charged with crimes in doing so, until such officer may be obtained to take charge of the offender, to whom he shall be delivered, with such statement made by the conductor, and such officer shall take the person so offending into custody, and it shall be his duty to institute a complaint against such person for such offense before a justice of the peace in his county, and such justice shall have jurisdiction to try such offender, and to impose the judgment authorized by this section.

(208) § 6290. SEC. 11. In forming a passenger train upon any railroad operated in this state, the engine shall be placed at the head of the train, and no baggage or freight car shall be placed in the rear of any passenger car; and any officer, agent, or other employe who shall cause them to be so placed, or who shall knowingly suffer the same to be done, shall be deemed guilty of a misdemeanor, and be punished accordingly.

This section has no application to a case where the engine was at the head of the train but was running backward.—*Morgan v. P. M. R. Co.*, 162/573.

(209) § 6291. SEC. 12. If any person shall, by the placing of any impediment upon the track of any railroad, or by any other means whatsoever, throw from said track any engine or cars used thereon, or attempt so to do, whether such engine or cars be thrown from said track or not, or shall by any other means whatsoever wilfully endanger, or attempt to endanger the lives of persons engaged in the work of said road, or persons traveling on the engine or cars of said road, he shall be subject to imprisonment in the state prison during his natural life, or any number of years, in the discretion of the court. And it shall not be necessary for the people to allege or prove in any such case that the person thereby intended to injure or endanger the life of any par-

particular person or persons. Or if any person shall throw any stone, brick, or other missile at any passenger train he shall be deemed to be guilty of a misdemeanor, and on conviction thereof, he shall be fined in an amount not less than ten dollars or more than three hundred dollars, or in default of fine, imprisonment in the county jail for not less than ten or more than ninety days, or by both fine and imprisonment, in the discretion of the court.

Penalty for throwing missiles at passenger trains.

Shooting at a brakeman is cognizable by the general criminal law and not under this provision.—*People v. Dunkel*, 39/255. See *People v. Petheram*, 64/273.

(210) § 6292. SEC. 13. A bell of at least thirty pounds weight and a steam whistle shall be placed on each locomotive engine, and said whistle shall be twice sharply sounded at least forty rods before the crossing is reached, and after the sounding of the whistle the bell shall be rung continuously, until the crossing is passed, under a penalty of one hundred dollars for every neglect: Provided, That at street crossings within the limits of incorporated cities or villages, the sounding of the whistle may be omitted, unless required by the common council or board of trustees of such city or village; and the company shall also be liable for all damages which shall be sustained by any person, by reason of such neglect. Every railroad corporation shall, and they are hereby required to cause signal boards to be placed, well supported by posts or otherwise, and maintained at each public road or street where the same is crossed by the railroad track at grade. The board shall be so elevated as to not obstruct the travel, and to be seen by people before reaching the crossing, and on each side of such board shall be painted in letters not less than twelve inches in height, the words "Railroad Crossing;" but such boards need not be put up in cities or villages, unless required by the proper officers thereof, or upon the order of the commissioner of railroads (railroad commission). This provision shall not apply to signal boards already erected.

Bell and whistle on locomotives, when used and penalty for neglect.

Proviso.

Signal boards.

SIGNALS AT CROSSINGS: It is only at public highway crossings that these signals are required, and not at mere private crossings, or elsewhere.—*Sanborn v. D., B. C. & A. R. Co.*, 91/549, 562; *Wayle v. M. U. Rys. Cos.* 170/81. Evidence as to giving of signals.—*Crane v. M. C. R. Co.*, 107/511; *Lonis v. L. S. & M. S. Ry. Co.*, 111/458. Whether the signals were omitted and whether this negligence caused the accident were questions for the jury.—*Bowsher v. G. R. & I. Ry. Co.*, 174/339, 346. Frightening of horse by blowing of whistle.—*Cavanaugh v. M. C. R. Co.*, 175/156.

SIGN BOARDS: These signs are required for the protection of the public.—*Haas v. G. R. & I. R. Co.*, 47/405; *Lepard v. M. C. R. Co.*, 166/373.

(211) § 6293. SEC. 14. Every locomotive engine, passenger, freight, or other train of cars running on any railroad shall be brought to a full stop not nearer than two hundred feet nor further than eight hundred feet from any railroad crossing, and shall not cross until the way is clear, and when two passenger or freight trains come up at the same time, the train on the road first built shall have precedence,

Trains to stop before crossing other railroads.

provided they are both main tracks over which passengers and freights on said road are transported, but if only one is such main track, and the other is a side or depot track, then the train on the main track shall take precedence, but if one of said trains is a passenger and the other a freight train, then the former shall take the precedence; and every engineer, conductor, or other person having charge or control of said engine or train, who shall offend against the provisions of this section, shall be liable to a fine of not exceeding one hundred dollars for each violation: Provided, That whenever there shall be adopted and used at any such crossing an interlocking switch and signal system, or other device, which in the judgment of the commissioner of railroads (railroad commission) will render it safe to permit engines and trains to pass over such crossings without being brought to a stop as above provided, said commissioner (commission) may, by a written order, a copy of which shall be filed and retained in his office, give permission for engines and trains to pass under such regulations as to rate of speed, and in other respects as he may deem proper, which order, however, said commissioner (commission) may at any time modify or revoke.

What train to have precedence.

Penalty for violation.

Proviso, in case of interlocking switch, etc.

Staal v. G. R. & I. R. Co., 57 / 243. The regulations as to stopping before reaching crossings are police regulations, designed to promote public safety and are binding on all roads.—*F. & P. M. R. Co. v. D. & B. C. R. Co.*, 64 / 370. Duty to keep train under control on approaching crossing.—*Kelly v. D., S. S. & A. Ry. Co.*, 92 / 19.

Fences, erection of, etc.

(212) § 6294. SEC. 15. Every railroad company formed under this act or any former act, and every corporation owning or operating any such railroad, shall erect and maintain in effective condition of repair, fences on each side of the right of way to their respective roads, as hereinafter provided. A legal railroad fence shall not be less than four and one-half feet high, and shall be made of boards and posts in combination as follows: The boards to be of pine or hemlock, six inches in width and sixteen feet in length; the posts to be of cedar, tamarack or oak, not less than seven feet in length and five inches in diameter, to be set not less than two and one-half feet in the ground at a distance apart not more than eight feet from center to center. First a board shall be nailed to the posts close to the ground; five inches above such first board, a second; six inches above the second, a third; six inches above the third, a fourth; six inches above the fourth, a fifth; all to be capped with a like board securely nailed to the fifth board and to the posts, all the boards to be firmly nailed to the posts with not less than two eight-penny or tenpenny fence nails at each post; or it may be constructed of posts, boards and wire in combination, as follows: The posts shall be of cedar, tamarack or oak, not less than seven feet in length and five inches in diameter, to be set not less than two and one-half feet in the ground at a dis-

Material.

Construction.

Posts, material, etc.

tance apart of not more than eight feet from center to center; at a height of sixteen inches from the ground a pine or hemlock fence board six inches in width, and seven inches above such first pine or hemlock board, a second of the same width, both fence boards to be firmly nailed to the posts with two eightpenny or tenpenny fence nails at each post; at a height of five inches from the ground a barbed fence wire and at ten inches from the ground a second barbed wire; forty-four inches from the ground, or nine inches from the second pine or hemlock board, a third barbed wire; and fifty-three inches from the ground, or nine inches above the third barbed wire, a flat Brinkerhoof strip, or some other metallic strand of similar pattern; or it may be constructed with such posts and set as above described and made as follows: At a height of four inches from the ground a barbed fence wire; at nine inches from the ground a second barbed wire; at fourteen inches from the ground a third barbed wire; at twenty inches from the ground a fourth barbed wire; at twenty-eight inches from the ground a fifth barbed wire; at thirty-seven inches from the ground a sixth barbed wire; at forty-eight inches from the ground a six-inch pine or hemlock fence board, capped with a six-inch pine or hemlock fence board; such wires and strips to be properly strained, and the posts sufficiently braced wherever necessary to prevent the wires from becoming loose or sagging, and the wires to be securely fastened to the posts with sufficient staples; all inequalities of the ground under the fence to be surfaced and leveled so that no animals can pass under the lower strand: Provided, That any fence or cattle-guard which shall have Proviso. the written approval and endorsement of the Michigan railroad commission of this state and which fence is not less than four and one-half feet in height and is otherwise equal in durability, strength and sufficiency to turn animals and stock to the fences herein described shall be a legal railroad fence or cattle-guard: Provided further, Any railroad com- Further proviso, fences erected. pany that has already erected fences along the line of its right of way may allow the same to remain until otherwise ordered by the Michigan railroad commission; but in such case said railroad company or corporation shall be liable for Liability. all damages done to animals or stock coming upon its right of way through or over such fence, but on the trial of any action for damages, if it shall be shown that the fence through or over which such animals or stock entered upon such right of way was four feet in height and otherwise equal in strength and sufficiency to turn animals or stock to the fence provided for in this act, then no damages shall be recovered. Such right of way fences shall be provided Cattle-guards, etc. with suitable connecting fences and cattle-guards at all highway and street crossings, which shall at all times be kept in effective repair and sufficient to prevent stock of all kinds from passing upon the track of the railroad at such

Farm
crossings.

Residence.

Proviso.

Disagreement.

Per diem
penalty.

Damages,
when liable.

highway or street crossings. Convenient farm crossings shall also be constructed by any such railroad corporation across the right of way and track of its railroad, with the necessary gates or bars therefor, as the owner or occupant of the premises may elect, at the sides of the right of way, which said gates or bars shall be of sufficient width to admit the free and easy transportation of all farm machinery, including harvesters or binders, in form as the same are usually drawn, upon the application of the owner or owners of land lying upon both sides of such railroad track, the same being enclosed by exterior fences, and being adjacent to such right of way. In cases where a railroad is immediately adjacent to or laid upon a highway and intervenes between said highway or the usually traveled portion thereof and the residence buildings of real property fronting upon said highway, open, unobstructed residence crossings, suitably guarded, substantially as are provided for highway and street crossings, shall be provided and maintained by the railroad corporation operating said railroad: Provided, The same shall be so ordered by the Michigan railroad commission. It shall also be the duty of each railroad company or corporation to construct and maintain a convenient and suitable crossing across its right of way to any private property, summer home or summer resort, whenever request therefor is made by any owner or owners or occupants of any such property. In case of disagreement between the owner of any such land and the railroad corporations as to the necessity for, location of, or character of farm crossings, or such private residence or other crossing so applied for, or as to the plan or construction of the gate or guards as herein provided, then either party may present the matter in dispute to the Michigan railroad commission, which may proceed to investigate the same as soon as may be and render its decision thereon, which shall be final and binding upon the parties, respectively, and such farm crossings and such private residence or other crossings shall be constructed within the time prescribed by the said Michigan railroad commission under a penalty of ten dollars for each and every day that such complete construction of the farm crossing, private residence or other crossing shall be delayed beyond the expiration of the time fixed for its completion by the said Michigan railroad commission. Such railroad corporation shall also be liable to the owner or occupant of said adjacent lands for all actual damages resulting from its failure to construct and maintain and properly guard such open and unobstructed way as herein provided for such private residence or other crossings. Until such crossings, fences and cattle-guards as hereinbefore provided for shall be duly constructed, the company or corporation owning or operating such road shall be liable for all damages done to cattle or other animals thereon which may result from the neglect of such company or cor-

poration maintaining or operating such road, to construct and maintain in repair such crossings, fences and cattle-guards as aforesaid, to be recovered by the owner of such cattle or other animals in a civil action before any court of competent jurisdiction, and after such company or corporation shall have constructed such crossings, fences and cattle-guards as hereinbefore provided, and while it shall continue to maintain the same in good and sufficient repair, it shall not be liable for any such damages as aforesaid, unless negligently or wilfully done. Every such company or corporation owning or operating any such railroad shall, within three months from the time any section or portion of such road is finished and put in general use by running regular trains thereon, and in the case of any roads now in use from the time this act shall take effect, erect and maintain the crossings, fences and cattle-guards as herein provided. Any violation of the provisions of this section on the part of any railroad corporation owning or operating any railroad in this state, by failure or neglect to construct and maintain crossings, fences and cattle-guards as herein required, shall be punished by a penalty of twenty-five dollars per day for each and every day that such neglect or failure shall continue: Provided, That if such fences and cattle-guards shall not be built as aforesaid along such portions of any line of road as is or may be constructed north of a line extending due west from the mouth of the Saginaw river, the corporation or company owning or operating any such line of road shall not be liable to the said penalty unless such fence or cattle-guards shall be ordered by the Michigan railroad commission, but shall be liable to all the other provisions of this section; and if any person shall ride, lead or drive, or intentionally permit any horse or other animal upon such road and within such fences or cattle-guards other than farm crossings, private residence or other crossings, or shall injure or destroy, or make openings or passages through or over such fences or cattle guards, or neglect to close any gates or bars immediately after passing through the same, without the consent of such company or corporation, he shall, for every such offense, be liable to a fine not exceeding one hundred dollars, and shall also pay all damages which shall be sustained thereby to the party aggrieved: Provided further, That nothing herein contained shall be construed to prevent the erection of any other fence than that herein provided for, as may be agreed upon in writing between the duly authorized agent or officer of any railroad corporation and the owner of any land through which the road of such corporation may be in operation.

Crossings, etc.
when to erect.

Penalty for
violations.

Proviso, when
not liable.

Further
proviso.

Am. 1909, Act 308.

ATTORNEY FEE: That part of the amendatory Act of 1885 which provides for an attorney fee in case of recovery against a railroad company for killing cattle was held unconstitutional.—Schut v. C. & W. M. Ry. Co., 70/433; Wilder v. C. & W. M. Ry. Co., 70/382; Rinear v. G. R. & I. R. Co., 70/620.

MICHIGAN CENTRAL: The M. C. R. Co. was not required by law or by its original charter to fence in its road for the protection of other persons' domestic animals, or for any other purpose.—*Williams v. M. C. R. Co.*, 2/259. But by amendment of Feb. 13, 1855, it was required to do so.—Act 139 of 1855. Upon the repeal of their charters that company and the other specially chartered companies were brought under the general law.

FENCES: A railway company is under no common law obligation to fence its track.—*Cont. Imp. Co. v. Phelps*, 47/299. See *Williams v. M. C. R. Co.*, 2/259; *Neversorry v. Railway Co.*, 115/146. Duty imposed by the revision of 1871.—*Cont. Imp. Co. v. Phelps*, 47/302. Under the revision of 1873.—*Davidson v. M. C. R. Co.*, 49/428. A lessee is an agent of the lessor in reference to fencing. Both principal and agent are liable.—*B. C. & E. S. R. Co. v. Austin*, 21/390. When the road is in the hands of a contractor.—*Pound v. P. H. & S. W. R. Co.*, 54/13. See *Gardner v. Smith*, 7/410. Under amendatory act of 1875.—*D. G. H. & M. Ry. Co. v. Hoyt*, 55/349. There are no statutes requiring fences for protection against personal injuries, but against injuries to stock.—*Marcott v. M. H. & O. R. Co.*, 49/103. But as to the liability of the railroad company for not fencing its track, in case of the death of, or injury to, a child that got upon the track, see *Id.* Same case, 47/9; *Keyser v. C. & G. T. Ry. Co.*, 56/559; 66/390. The requirement to fence the right of way contemplates that the tracks shall be exposed within the limits of the highway only.—*Parker v. L. S. & M. S. Ry. Co.*, 93/607. Fencing north of Saginaw river under amendatory act of 1875.—*Marcott v. M. H. & O. R. Co.*, 47/1. The right to compel railroad companies and land owners to fence is founded upon the police power of the state.—*Neversorry v. Railway Co.*, 115/146. And it is intended not alone as a protection to the property of adjacent owners, but also as a protection to the employes and passengers upon trains.—*Id.*

SUFFICIENCY AND STRENGTH: *Coleman v. F. & P. M. R. Co.*, 64/160; *Davidson v. M. C. R. Co.*, 49/428; *B. C. & E. S. R. Co. v. Austin*, 21/390. The sufficiency of the fence is not impaired by leaving gates in it; nor does it come in question where the cattle have got upon the track by going through the gate while open.—*D. G. H. & M. Ry. Co. v. Hoyt*, 55/347. As to fences constructed according to agreement between the parties, see *Neversorry v. Railway Co.*, 115/146. Evidence of sufficiency and condition.—*Bowen v. F. & P. M. Ry. Co.*, 110/445.

CARE IN MAINTAINING: A railroad company must be as watchful in keeping its fences in repair as any prudent person would be in maintaining fences to protect his property.—*Crosby v. D. G. H. & M. Ry. Co.*, 58/458. It is bound only to reasonable diligence and is not liable for injuries occurring to cattle that come upon the track through defects in fences not traceable to want of care.—*G. R. & I. R. Co. v. Monroe*, 47/152. The meaning of the requirement to "maintain fences" when once built, is not that the company, at all hazards, must keep the fences intact in every foot of their extent and without any interruption from whatever cause; but it is that there must be no interruption caused by the neglect or fault of the company, or in case of a breach by company, or, in case of a breach by causes beyond their control no interruption for a longer period than is reasonable in view of the circumstances.—*Robinson v. G. T. Ry. Co.*, 32/324; see *McDonald v. M. S. P. & S. S. M. Ry. Co.*, 105/659; *Johnson v. D. & M. Ry. Co.*, 135/353.

DEPOT GROUNDS: Depot grounds and their approaches need not be fenced.—*C. & G. T. Ry. Co. v. Campbell*, 47/265; *F. & P. M. Ry. Co. v. Lull*, 28/510; *McGrath v. D. M. & M. R. Co.*, 57/555; *Early v. L. S. & M. S. Ry. Co.*, 66/350; *Rinear v. G. R. & I. R. Co.*, 70/620; *Groudin v. D. S. S. & A. Ry. Co.*, 100/598; *Rabidon v. C. & W. M. Ry. Co.*, 115/390; *Hathaway v. Railway Co.*, 124/614; *Katzinski v. G. T. Ry. Co.*, 141/75. The convenience of the public, as well as that of the company, is the reason why the statute should not apply to the depot and station grounds, and it would require legislative action to change the rule.—*McGrath v. Railroad Co.*, 57/555. And the exemption is not limited to such grounds as are in actual, present use, but their contemplated future may be taken into consideration in laying out the grounds.—*Id.* The criterion is not whether all the grounds have been actually used, but whether, in view of present and prospective needs, the company has used a reasonable discretion in throwing them open for that purpose.—*Rinear v. Railroad Co.*, 70/622. At least as much of the main line and grounds outside of the switches as is in actual use for reaching the side tracks is a part of the station grounds.—*Groudin v. Railway Co.*, 100/598. Necessary use of a portion of the right of way, and not merely distance from the depot, determines "yard limits."—*Rabidon v. C. & W. M. Ry. Co.*, 115/390. When the company claims that the animal killed entered its premises within its station or depot grounds, which are not required to be fenced, the burden of proof of such defense is on the company.—*Wilder v. C. & W. M. Ry. Co.*, 70/382. Grounds at a flag station, where trains are regularly stopped when necessary, are depot grounds, although no building is erected thereon, and need not be fenced.—*Schneekloth v. Railway Co.*, 108/1. Within reasonable bounds a railroad company may extend its station grounds, and ordinarily, the limits fixed by the company must govern.—*Fuller v. Railway Co.*, 108/690. The requirement of fencing the right of way is not applicable to places properly devoted to the receiving or unloading of freight.—*Cornell v. M. & N. E. R. Co.*, 117/238. And a portion of the right of way of a railroad through a new and heavily timbered

country, may properly be left unfenced as a storing or unloading place for forest products, although a mile and a half from the nearest station.—*Id.* And a railroad company incurs no liability for damage to stock for leaving a portion of its right of way unfenced, for the convenience of the general public, where a spur joins the main track.—*McDonald v. Railway Co.*, 113/484. A railroad company is not liable for an injury to a child which strays upon the track within its yard limits by reason of the lack of a fence.—*Burtram v. M. C. R. Co.*, 148/166.

LIABILITY: Liability attaches as soon as the company takes possession for purposes of construction.—*Gardner v. Smith*, 7/410; *Cont. Imp. Co. v. Ives*, 30/449. Liability for not fencing in case of injury to a child that got upon the track.—*Marcott v. M. H. & O. R. Co.*, 47/9; 49/99; *Keyser v. C. & G. T. R. Co.*, 56/563; 66/390. When stock gets upon the track by reason of the company's neglect to fence properly, and is killed, no other negligence need be proved to make the company liable.—*Talbot v. M. St. P. & S. S. M. Ry. Co.*, 82/70-1, citing *Flint, etc., Ry. Co. v. Lull*, 28/510; *G. R. & I. R. Co. v. Southwick*, 30/444. And this liability attaches to railroads in the upper peninsula.—*Id.* 71, citing *Marcott v. Railroad Co.*, 47/1.

NEGLIGENCE OF COMPANY: Upon this question compare *F. & P. M. Ry. Co. v. Lull*, 28/511; *Robinson v. G. T. Ry. Co.*, 32/322; *Stevenson v. G. T. Ry. Co.*, 34/323; *T. C. S. & D. Ry. Co. v. Eder*, 45/329; *G. R. & I. R. Co. v. Monroe*, 47/152; *Clark v. C. & W. M. Ry. Co.*, 62/358; *Coleman v. F. & P. M. R. Co.*, 64/160; *Jebb v. C. & G. T. Ry. Co.*, 67/160; *Bowen v. F. & P. M. Ry. Co.*, 110/445. Negligence may sometimes be inferred from all the evidence taken together, even though the only direct evidence on the subject tends to negative it.—*Crosby v. D. G. H. & M. Ry. Co.*, 58/458. Trainmen owe no duty to the owner of animals trespassing on the right of way to look out for or to discover them; reasonable care merely requires that they should save them if fairly possible after discovering them.—*Rattenbury v. P. M. R. Co.*, 172/106.

NEGLIGENCE OF OWNER: The statutory liability of the company for injuries to cattle by reason of neglect to put in and maintain side-fencing is not affected by the contributory negligence of the owner of the cattle.—*G. R. & I. R. Co. v. Cameron*, 45/452; *F. & P. M. Ry. Co. v. Lull*, 28/510; *Neversorry v. Railway Co.*, 115/146; *Peter v. Railway Co.*, 121/329; *Hathaway v. Railway Co.*, 124/610. In turning cattle at large in the public highway near a railroad crossing, without a keeper, the owner is guilty of contributory negligence, and the railroad company is not liable for injury thereto on the crossing.—*Robinson v. F. & P. M. R. Co.*, 79/323. So is turning a horse into the highway adjoining unfenced depot grounds.—*Schneekloth v. Railway Co.*, 108/1. See also *La Flamme v. Railway Co.*, 109/509. But where a colt breaks into a highway from the pasture without the owner's knowledge or negligence, that is not such a suffering to run at large as involves contributory negligence.—*Parker v. L. S. & M. S. Ry. Co.*, 93/607; see *Bowen v. F. & P. M. R. Co.*, 110/445. The statutory liability of a railroad company for stock killed upon its track by reason of its failure to maintain a sufficient cattle guard is not affected by the owner's contributory negligence.—*LaFlamme v. D. & M. Ry. Co.*, 109/509; *Hathaway v. Railway Co.*, 124/610. Mere negligence of plaintiff no defense to action under this statute.—*Chapin v. A. A. Ry. Co.*, 167/648. The owner of a colt who permits to run at large in a highway over which an electric road is operated, or carelessly permits it to escape, is guilty of contributory negligence.—*Nissly v. D. J. & Chicago Ry. Co.*, 168/676.

CATTLE GUARDS: Are sufficient if they are in good repair and of a pattern that has been found by experience effective in keeping from the track such animals as they are generally designed to restrain.—*Smead v. L. S. & M. S. Ry. Co.*, 58/200. Where a company is not required to fence, as within their depot grounds, they are not required to construct cattle guards.—*Stern v. M. C. R. Co.*, 76/591. Personal injury for falling through a cattle guard.—*Williams v. C. C. C. & St. L. Ry. Co.*, 102/537. Other cases: *Lemon v. C. & G. T. Ry. Co.*, 59/618; *Whitsky v. C. & G. T. Ry. Co.*, 62/245; *Lafferty v. C. & W. M. Ry. Co.*, 71/35. The obvious intent of the legislature in providing for fences and cattle guards is to exclude animals from entering upon the track. The fence keeps them from entering from adjoining premises; the cattle guards from entering from the highways.—*Fuller v. Railway Co.*, 108/690. If not a duty, it is proper for a railroad company to construct a cattle guard at a point on its track where the station grounds end and from where it is required to fence the track.—*Id.* Defective cattle guard.—*Hathaway v. Railway Co.*, 124/610. A railroad company is under statutory obligation to provide and maintain cattle-guards and connecting fences at the point where its fenced track leaves its unfenced yard.—*Stewart v. G. R. & I. R. Co.*, 147/48. Whether the cattle guard was properly located, etc., properly left to jury.—*Goretsky v. Railway Co.*, 172/623. Contributory negligence of the owner in allowing the animal to graze in the highway is no defense to the claim that the cattle guard was defective.—*Geerds v. Ann Arbor Railroad Co.*, 181/12.

APPROVAL BY COMMISSIONER: It is not necessary for the commissioner of railroads to inspect and approve in writing every cattle guard and every foot of fence, upon the various railroads; and the plain intent of the statute is complied with when he describes the fence or cattle guard which

he approves, or where he mentions it by name, where such name applies to a cattle guard of definite and fixed description.—*LaFlamme v. D. & M. Ry. Co.*, 109/509. The sufficiency of cattle guards, after approval by the commissioner, is not a question for the jury.—*Clement v. P. M. R. Co.*, 138/57.

FARM CROSSINGS: Duty of railroad company to construct and maintain.—*Stewart v. C. & W. M. Ry. Co.*, 80/166; 89/315. Constructed under agreement between owner and railroad company.—*Neversorry v. Railway Co.*, 115/146.

RESIDENCE CROSSINGS, ETC.: Railroad companies cannot be compelled to erect and maintain residence crossings at their own expense for the use and benefit of individuals, when no statute existed at the time of the construction of the road requiring such action on their part.—*People v. D. G. H. & M. Ry. Co.*, 79/471. Nor is a company obliged to plank between the rails to accommodate persons who wish to reach the depot by going across lots.—*O'Neil v. D. S. S. & A. Ry. Co.*, 101/437. Obstruction of private crossing.—*Bolton v. M. & G. R. Co.*, 95/202.

FORM OF ACTION: When action in assumpsit will not lie against company to recover damages for failure to maintain fences, etc.—*Labadie v. Railway Co.*, 125/419.

DECLARATION: A declaration for an injury, caused by the insufficiency of a cattle guard, should state in what particulars it was insufficient; and if it does not do so it is demurrable.—*Smead v. L. S. & M. S. Ry. Co.*, 58/200. The actionable negligence being the neglect to fence and the damages being claimed as resulting therefrom, a general statement has always been allowed of such continuous, natural mischiefs as occur frequently and cannot be described by single items. Such mischiefs as almost invariably follow the destruction of fences and exposure of lands cannot be itemized easily.—*G. R. & I. R. Co. v. Southwick*, 30/446-7. The declaration need not be framed upon the statute and refer to it. The duty to fence is imposed by general statutes of which the courts are bound to take notice.—*Id.* 447; *Cont. Imp. Co. v. Ives*, 30/448. As bearing upon the requisites of the declaration, see *McDonald v. C. & N. W. Ry. Co.*, 51/628; *Jebb v. C. & G. T. Ry. Co.*, 67/160. Amendment of declaration.—*Hathaway v. Railway Co.*, 124/610. Sufficiency of declaration.—*Chapin v. Ann Arbor R. Co.*, 167/648.

QUESTIONS FOR JURY: Sufficiency of fence.—*Agnew v. M. C. R. Co.*, 56/56. The claim by the company that the manner of the construction of its fences and cattle guards at the highway crossing where the injury occurred was a substantial compliance with the statute was properly submitted to the jury.—*Parker v. L. S. & M. S. Ry. Co.*, 93/607; *Johnson v. D. & M. Ry. Co.*, 139/287. Question of negligence, in view of all the circumstances.—*Crosby v. D. G. H. & M. Ry. Co.*, 58/458. But the extent of station grounds which need no fencing, not being fixed according to the continuous actual use of every part of them, their proper limits cannot be collaterally determined by a jury in a damage case.—*McGrath v. D. M. & M. R. Co.*, 57/555. The court cannot amend the verdict of the jury after it has been entered and the jury discharged, by increasing the amount, upon the affidavits of the jurymen, that they instructed the foreman to return a verdict for a certain sum with interest, but the foreman neglected to mention the interest.—*Parker v. L. S. & M. S. Ry. Co.*, 93/607.

Company
liable for
damages by
fire originat-
ing from its
road.

Proviso.

(213) § 6295. SEC. 16. Any railroad company building, owning, or operating any railroad in this state, shall be liable for all loss or damage to property by fire originating from such railroad, either from engines passing over such roads, fires set by company employes by order of the officers of said road, or otherwise originating in the constructing or operating of such railroad: Provided, That such railroad company shall not be held so liable if it prove to the satisfaction of the court or jury, that such fire originated from fire by engines whose machinery, smoke-stack or fire-boxes were in good order and properly managed, or fires originating in building, operating, or repairing such railroad, and that all reasonable precautions had been taken to prevent their origin, and that proper efforts had been made to extinguish the same in case of their extending beyond the limits of such road, when the existence of such fire is communicated to any of the officers of such company.

DAMAGE BY FIRE: When the company is not liable.—*M., H. & O. R.*

Co. v. Spear, 44/169; 49/276. A railroad company must keep its right of way reasonably clear of dangerous combustible matter, and if a fire occurs in consequence of a negligent failure so to do and damages ensue therefrom to the property of another, the company will be liable.—Jones v. M. C. R. R. Co., 59/440; Briant v. Railroad Co., 104/307. This section contemplates the communication of fire and consequent loss and damage, notwithstanding the exercise of prudence and care in the selection of appliances and in the management and operation of trains. It fixes the standard of condition and management, but it does not attempt to establish a standard of kind or quality of appliances.—Hogan v. C., D. & C. G. T. J. R. Co., 86/621. The reason why, under certain circumstances, a railroad company is required by law to remove inflammable material, when practicable, is to prevent its engines from setting fire thereto and not to protect adjoining property from the acts of other parties.—Osborne v. C. & W. M. Ry. Co., 111/15. This statute does not change the common law liability for setting fires; it simply shifts the burden of proof upon the defendant to show that such fires were not negligently set.—Fisk v. Wabash R. Co., 114/248. In an action against a railroad company for negligence in permitting the accumulation of combustible material on its right of way, the burden is on the plaintiff to prove the origin of the fire and that the negligence of the defendant was the proximate cause of the injury.—Osborne v. C. & W. M. Ry. Co., 111/15. The specification, of what facts proved will relieve the company from liability, excludes the right to rely on plaintiff's contributory negligence as a bar to recovery.—Peter v. Railway Co., 121/324. In an action against a company for negligent fire set by its locomotive, defendant establishes by reputable and uncontroverted evidence that its appliances were such as good railroading requires, and in the condition required by law, and properly managed, the statute does not require the question of negligence to be submitted to the jury, but the question is one of law for the court.—Dolph v. L. S. & M. S. R. Co., 149/278. Liability of company for cutting fire hose.—Clark v. G. T. W. R. Co., 149/400. Measure of damages for the destruction by fire of logs piled along railroad company's right of way for shipment.—Quay v. D. S. S. & A. R. Co., 153/567. Evidence sufficient to entitle plaintiff to take verdict of jury.—Leffonier v. Railway Co., 163/635. Declaration under this section.—Hewitt v. P. M. R. Co., 171/211.

(214) § 6296. SEC. 17. All railroads through lands enclosed by exterior fences that shall not be fenced as required by section fifteen of this article, within the time therein required, shall not be operated through such enclosed lands without the consent in writing of the owner or occupant thereof. Upon complaint being made under oath to said commissioner of railroads (railroad commission), by any person or persons owning or occupying such lands, that any railroad is being operated through the same in violation of the provisions of this section, he shall proceed to ascertain the facts in regard thereto, and if satisfied that such railroad is being so operated, he shall cause notice to be served upon the company or corporation owning or operating such railroad, requiring the fences and cattle-guards to be constructed within such time, not less than fifteen or more than sixty days, as may be specified in such notice, at the discretion of said commissioner of railroads (railroad commission). In case of the refusal or neglect of any such company or corporation as aforesaid to comply with the requirements of the order of the commissioner of railroads (railroad commission), and to fence their road and put in the necessary cattle-guards, within the time prescribed in the said notice of the commissioner (commission), then it shall be the duty of the said commissioner (commission), first giving at least five days' notice previous thereto, to the corporation so refusing or neglecting to comply with his said order, to present, either in open court or at his chambers, to the judge of the circuit court in and for the county in which the land so remaining unfenced, as herein provided, is situated, his

Railroads not fenced through lands enclosed must have owner's permit to be operated.

Duty of railroad commission as to fence complaints.

petition setting forth the fact of said railroad company or corporation refusing to comply with the requirements of his said order, and praying for an injunction restraining such company or corporation from operating its road through the enclosed lands described in the said order of the said commissioner (commission), until such fences and cattle-guards are constructed in accordance with the requirements of said order. If upon the hearing of such petition, the circuit judge to whom the same shall be presented, shall be satisfied that the facts set forth in the petition of the said commissioner of railroads (railroad commission) are true, he shall grant an injunction as prayed for, restraining the corporation or company from operating its road through the land described in the said petition, until such time as the requirements of the commissioner's (commission's) order to fence shall have been fully complied with, and the fact of such compliance duly certified by the said commissioner of railroads (railroad commission) to the corporation or company so enjoined from operating its road as herein provided, shall relieve such company or corporation from the further restraint imposed by such injunction.

Wilder v. Railway Co., 70 / 385.

Certain employees to be provided with uniform, caps and badges.

(215) § 6297. SEC. 18. Every railroad corporation shall provide a uniform, hat or cap and distinguishing badge, to be worn by all its employees whose duties relate to the immediate transportation of passengers or their baggage. A corporation neglecting to furnish and provide such uniform, hat, or cap, and badges, shall forfeit one hundred dollars for each week such neglect shall continue; and if any employe for whom such uniform, hat, or cap, and badge is provided shall neglect when on duty to wear the same, the corporation employing him, shall for each case of such neglect, forfeit the sum of five dollars; and said corporation may retain the same out of the wages of the employe so offending; no employe unless wearing his uniform, hat or cap and badge shall be permitted to exercise any authority, or perform any of the duties of his office. The provisions of this section shall not apply to engineers and firemen.

Lighting of passenger cars.

(216) § 6298. SEC. 19. No passenger car on any railroad shall be lighted by naphtha, or by any illuminating oil or fluid made in part of naphtha, or wholly or in part from coal oil or petroleum, or other substance or material which will ignite at a temperature of less than three hundred degrees Fahrenheit. Any railroad corporation which violates the provisions of this section shall forfeit a sum not exceeding five hundred dollars.

Issue of false bills of lading, penalty for.

(217) § 6299. SEC. 20. If any officer, agent, clerk, servant, or employe of any railway company of this state, or which may be doing business in this state, shall execute and deliver to any person or corporation, or execute to be deliv-

ered, a bill of lading, receipt, or certificate, which shall purport to be property at the time of executing such bill of lading, receipt, or certificate in possession of such railway company or its agent, when the property is not in the possession or control of said railway company, he shall be deemed guilty of a felony, and on conviction thereof shall be punished by fine not exceeding two thousand dollars, or imprisonment in the state prison not exceeding three years, or both, in the discretion of the court.

(218) § 6300. SEC. 21. If any person having possession or control of a bill of lading, receipt, or certificate of any such railway company, knowing the same to have been executed when the property described therein was not in possession of the railway company or agent issuing the same, who shall sell, pledge, or otherwise dispose of such bill of lading, receipt, or certificate for a valuable consideration, or as security for a past debt, shall be deemed guilty of a felony, and on conviction thereof, shall be punished by fine not exceeding three thousand dollars, or imprisonment in the state prison not exceeding three years, or both, in the discretion of the court.

False bills
of lading,
sale of.

(219) § 6313. SEC. 22. All person or persons, railroad companies or corporations, owning or operating roads in this state shall, and are hereby required on or before the first day of January, one thousand eight hundred and eighty-four, to so adjust, fill or block the frogs, switches, and guard rails on their roads, in all yards, divisional and terminal stations, and where trains are made up, as to prevent the feet of employes or other persons from being caught therein. Any railroad company or corporation, which shall fail to comply with the provisions of this section, shall be liable to a fine of not less than one hundred dollars, nor more than one thousand dollars, and the neglect of any such person, company, or corporation to comply with the provisions of this section shall be deemed a violation of the same. All penalties incurred under this act may be recovered in the manner provided by law for the recovery of penalties incurred by private persons.

Blocking, etc.,
of frogs,
switches, etc.

Penalty for
failure.

This section was added to Art. v. by Act No. 174 of 1883 and numbered 22, although the last section of the original article v is 13. The intention was, doubtless, to add it to Art. iv instead of Art. v.

BLOCKING FROGS: The blocking must be permanent and effectual.—Eastman v. L. S. & M. S. Ry. Co., 101/597. The duty is one that the company cannot delegate to any of its employes so as to relieve itself from the obligation of the law; and the servant's neglect is the company's neglect.—Ashman v. F. & P. M. Ry. Co., 90/567. Whether the act applies to "split switches," which were not in use when it was enacted.—Query.—Grand v. M. C. R. Co., 83/564. It is the duty of the company (conceding the impossibility of a literal compliance with the statute) to make its frogs as nearly safe as possible.—Jones v. Railway Co., 127/198.

(220) § 6301. SEC. 22. Every railroad corporation constructing its road upon, or across any stream of water, water-course, private road, street, lane, alley, or highway, across any plank road, railroad, or canal, which the line of its

Railroads
crossing roads,
streams, etc.,
must restore
to former
condition.

road shall lie along or intersect, and shall fail, neglect, or refuse to restore such stream, water-course, private road, street, lane, alley, highway, plank road, railroad, or canal to its former condition as nearly as possible, as is provided by the fifth subdivision of section nine of article two of this act, shall be liable to a penalty of not less than five nor more than twenty-five dollars for each and every day that they shall fail, neglect, or refuse to perform the things hereinbefore specified and required to be performed: Provided, That all culverts or [other] openings in or under the road-bed of any such railroad corporation, made for the flow of water, shall be so constructed as not to interfere with the proper and thorough drainage of the land above such railroad. And any railroad corporation, or company owning or operating a railroad in this state that shall permit its engines, cars, or trains to obstruct any public street or highway, for a longer period than five minutes at any one time, shall be liable to a penalty for each offense of twenty-five dollars. The penalties provided for each case herein, shall be recovered in an action to be brought in the name of the people of the state of Michigan by the prosecuting attorney of the proper county, in which the offense charged shall have been committed, upon the complaint of the proper authorities of any city, village, or township, or of any citizen injured or aggrieved by the violation by any railroad corporation or company, of the provisions of this act in this section contained.

Penalty for neglect.

Proviso.

Must not block streets more than five minutes.

Penalty.

How recovered.

Act No. 234 of 1885 added this section and numbered it 22, as the preceding section was supposed to have been added to Art v.

Effect of leases of road and franchises.—Ackerman v. C. S. & M. R. Co., 143 / 58.

ARTICLE V.—MISCELLANEOUS PROVISIONS.

Liability of stockholders for labor performed.

(221) § 6302. SECTION 1. All the stockholders of any such company shall be individually liable for all the labor performed; but they shall not be liable to an action therefor until an execution shall be returned unsatisfied, in whole or in part, against the corporation, and the amount due on such execution shall be prima facie evidence of the amount recoverable with cost against any such stockholder; and every stockholder against whom any such recovery for labor, ties, wood and supplies shall have been had, shall have the right to recover the same of the other stockholders in said corporation, in ratable proportion to the amount of stock they shall respectively hold.

Liability of stockholders. See Const. xii, 4.

Companies not liable when persons are killed on platforms, etc.

(222) § 6303. SEC. 2. In case any passenger on any such road shall be killed or injured while on the platform of a car, or while in or on any baggage or freight car, in violation of the printed regulations of the company, posted up at the time in a conspicuous place inside its passenger cars then

in the train, such company shall not be liable for the injury, if the injury be occasioned by the person being improperly on such platform or within such baggage or freight car, or after having been notified by the conductor or any other person having charge of any train, that such person is not in the proper place: Provided, Said company at the time furnished room and seats inside its passenger cars sufficient for the proper accommodation of its passengers. Proviso.

Allowing children to ride on platform or exposed places.—*E. S. City Ry. Co. v. Bohn*, 27/503. Such persons not chargeable with negligence.—*Id.* And where a car is so crowded that a passenger becomes sick and faint on account of the impure air, and, not being able to reach a window, steps out on the platform, he is not guilty of contributory negligence as a matter of law.—*Morgan v. Railway Co.*, 138/626. See *Conroy v. United Railway*, 139/173.

(223) § 6304. SEC. 3. If the directors of any corporation organized under this act, shall declare and pay any dividend when the company is insolvent, or the payment of which would render it insolvent, they shall be severally liable to a penalty of five hundred dollars. Penalty for declaring a dividend when company insolvent.

(224) § 6305. SEC. 4. If any certificate or report made or public notice given by the officers of any such company, in pursuance of the provisions of this act, shall be wilfully false in any material representations, all the officers who shall have signed the same, knowing it to be false, shall be severally liable to a penalty of five hundred dollars each. Penalty for making false certificates or report.

(225) § 6306. SEC. 5. Any corporation organized under this act, or any former act, shall, when applied to by the postmaster general, carry the mails of the United States on their road or roads respectively; but the prices shall not be less for carrying said mails in the regular passenger trains than the amount which said corporation would receive as freight on a like weight of merchandise transported on their merchandise train, and a fair compensation for their post-office car. Corporation to carry U. S. mail.

Under the postal laws of the United States, each railroad company is bound to carry to and from the postoffice all mails at terminal points of its road, while the government lets special contracts for such carriage to and from the stations along the line.—*McClary v. M. C. R. Co.*, 102/312.

(226) § 6307. SEC. 6. If any railroad company shall not, within three years after its organization, begin the construction of its road and expend thereon ten per cent on the amount of the capital stock subscribed, and finish the road and put it in full operation in ten years from the time of its organization, it may be adjudged to have forfeited its corporate rights and privileges by any court of competent jurisdiction, on the petition of one-fourth in value of its stockholders, except as to so much thereof as shall be completed at the time of filing such petition. When company may be adjudged to have forfeited its corporate rights, etc.

(227) § 6308. SEC. 7. Whenever the death of a person shall be caused by wrongful act, neglect, or default of any railroad company, or its agents, and the act, neglect, or de- Death caused by wrongful act, etc.

fault is such as would (if death had not ensued) entitle the party injured to maintain an action and recover damages in respect thereof; then and in every such case, the railroad corporation which would have been liable if death had not ensued shall be liable to an action on the case for damages, notwithstanding the death of the person so injured, and although the death shall have been caused under such circumstances as amount in law to felony.

Note.—It is impossible to classify sharply and distinctly the numerous cases falling under the principle of this section so as to put each case once for all under its appropriate heading. On the other hand, to put each case under every head to which it might properly be referred would involve much repetition and an unprofitable waste of space. A general classification and arrangement is all that has been attempted.

CARE REQUIRED OF COMPANY: All railroad companies are held to the duty of being prudent railroad companies, and bound to conduct their business with such precaution as prudence has usually found necessary.—*M. C. R. Co. v. Coleman*, 28/449. The care to be expected of all persons exercising business involving danger must be such as is reasonably calculated to avoid serious consequences—such as may be reasonably regarded as enough to prevent the probability of mischief, so that if it occurs it may be rightly treated as accidental.—*Marcott v. M. H. & O. R. Co.*, 47/6. But a carrier is not an insurer of the safety of passengers.—*Keeley v. City Electric Ry. Co.*, 168/79. One who is upon the station grounds for the purpose of receiving mail and express from a train is entitled to the same protection as one intending to take passage on the train.—*Tubbs v. M. C. R. R. Co.*, 107/108. The company must choose its servants with prudence and regard to their fitness.—*Quincy Mining Co. v. Kitts*, 42/39. And the company is liable if a servant is retained after his unfitness or negligence has been discovered or communicated to it.—*Id.* Or if the servant is generally known to be unfit.—*Davis v. D. & M. R. Co.*, 20/124. See *Lee v. M. C. R. Co.*, 87/574; *Hilts v. Railway Co.*, 55/437; *Smith v. Potter*, 46/258. Where a servant was competent at the time of his employment, but afterwards becomes incompetent, or indulges in a habit which makes him so, notice of such incompetency or habit must be brought home to the master or it must be so notorious as to charge the master with knowledge.—*Lee v. Railroad Co.*, 87/574; *Walkowski v. P. & G. Consolidated Mines*, 115/629. When a company has exercised due care and prudence in the choice of its servants, no presumption of unfitness afterward arises; yet the company must continually exercise a vigilance corresponding in degree with the dangers attending, or likely to attend, careless management.—*M. C. R. Co. v. Gilbert*, 46/179-80. A master is not responsible for a positive wrong intentionally or recklessly done by a servant beyond the scope of his business.—*Keating v. Railway Co.*, 97/154. At highway crossings the speed of the trains must be consistent with the degree of care and prudence required in good railroad management, and the crossing approached and passed with the care and prudence commensurate with the rate of speed attained, and the train managed and controlled with that degree of care and prudence required for the safety of the lives and property of persons rightfully approaching and passing such crossings.—*Guggenheim v. L. S. & M. S. Ry. Co.*, 66/159. The company may select and adhere to such arrangement of their depots and platforms as they see fit, so long as it is safe and commodious.—*M. C. R. Co. v. Coleman*, 28/451. Trains must stand at the station a reasonable time to permit passengers to get on or off the cars.—*F. & P. M. R. Co. v. Stark*, 38/714. The employees of a railroad company are not charged with the duty of assisting a passenger to alight or of pointing out to him the proper place to alight, when they have no knowledge of his desire or intention to do so.—*Nichols v. C. & W. M. Ry. Co.*, 98/208. A railroad company is not obliged to notify passengers not to alight at an intervening crossing, because it has announced the succeeding station as such.—*Minock v. D. G. H. & M. Ry. Co.*, 97/425. Further as to receiving and discharging passengers.—*Sherwood v. C. & W. M. Ry. Co.*, 82/374, 88/108; *Jacob v. F. & P. M. R. Co.*, 105/450. The company is bound to provide means to prevent cars from being moved beyond the end of the rails on a siding, where persons have a right to pass and cannot be expected to be on the lookout for danger.—*G. R. & I. R. Co. v. Martin*, 41/671. Must provide vehicles which insure security to passengers and not suffer them to occupy unsafe places thereon.—*E. S. C. Ry. Co. v. Bohn*, 27/503. Carriers of passengers are not insurers like carriers of freight; degree of care in furnishing safe cars and appliances.—*G. R. & I. R. Co. v. Huntley*, 38/537. Care in case of infants.—*G. R. & I. R. Co. v. Martin*, 41/671; *C. & N. W. Ry. Co. v. Smith*, 46/504; *Schindler v. M. L. S. & W. Ry. Co.*, 87/400. Must keep track in safe and suitable condition and run trains with regularity and dispatch for the carriage of passengers.—*Henry v. L. S. & M. S. Ry. Co.*, 49/495. Persons going to the train to meet passengers are customers of the company and not trespassers.—*McKone v. M. C. R. Co.*, 51/601. Must provide reasonably safe and convenient means of reaching the station.—

Collins v. T. A. A. & N. M. Ry. Co., 80/390; Cross v. L. S. & M. S. Ry. Co., 69/363; Cole v. L. S. & M. S. Ry. Co., 81/156. And the duty of the company to its passengers does not cease the moment they alight from the train, but continues until they have had a reasonable opportunity to leave the company's premises.—Burnham v. W. W. Ry. Co., 91/523. Giving notice of danger.—Helbig v. M. C. R. Co., 85/359. Absence of switch light.—Town v. M. C. R. Co., 84/214. Running without a head light.—Van Anken v. C. & W. M. Ry. Co., 96/307. See further, as to care required of company.—Anderson v. M. C. R. Co., 107/591; Foley v. D. & M. Ry. Co., 179/586. A railroad company is not relieved from liability for its own negligence by the fact that a right of action may also exist against the municipality for the same injury.—Jeffrey v. D. L. & N. R. Co., 108/221. A railroad company must stop its train long enough to enable its passengers to alight.—Smalley v. D. & M. Ry. Co., 131/560; Keeley v. Electric Ry. Co., 168/79. A railroad company, having placed its dining car at the rear of a train, and invited its passengers to go to and from it, is bound to provide a safe passage from one car to another.—Robinson v. C. & A. R. Co., 135/254. Duty of railroad company to keep in safe condition an approach for its passengers across private property.—Lemon v. G. R. & I. Ry., 136/647. The duty imposed upon a railroad company is to exercise reasonable watchfulness and care in inspecting its tracks and in keeping them in a reasonably safe condition and not to the absolute duty to keep them in a reasonably safe condition.—Culver v. S. H. & E. R. Co., 138/443. Care of platform, etc.—McCormick v. Railway, 141/17. Snow and ice on platform.—Meyer v. M. C. R. Co., 180/516. A common carrier owes the duty of at least reasonable care in furnishing and maintaining cars in a safe condition.—Plefka v. D. U. Ry., 155/53. Its obligations and liabilities cannot be diminished by rules defining duties of employees.—Dixon v. G. T. W. Ry. Co., 155/169. An agricultural society is under the same obligation as a private corporation in the erection and maintenance of places to which it invites its patrons.—Logan v. Agricultural Society, 156/537. Care required of municipal corporations which furnish electric light, to patrons for commercial purposes.—Hodgins v. Bay City, 156/687. Care and maintenance of spur track.—Plumb v. Hecla Co., 157/562. A street railway company must exercise the highest degree of care in taking on or discharging passengers.—Beattie v. D. U. Ry., 158/243. Duty to licensees or trespassers.—Schmidt v. Mich. Coal & Mining Co., 159/308. Starting and stopping cars.—Ottinger v. D. U. Ry., 166/106. The relation of carrier and passenger continues while the passenger is transferring from one car to another as a part of one continuous trip after having secured a transfer ticket.—Wilson v. D. U. Ry., 167/107. Proof of incompetency of engineer.—Larry v. D. & M. Ry. Co., 167/380. Duty towards licensee on track.—Minor v. Escanaba Lumber Co., 167/431. Relation of passenger and carrier, when not existing.—Buman v. M. C. R. Co., 168/651. When existing.—Serviss v. Ann Arbor R. Co., 169/564. Liability for injury to volunteer assistant.—Johnson v. E. C. Clark Motor Co., 173/277.

WHAT IS NEGLIGENCE: Negligence is neither more nor less than a failure of duty.—M. C. R. Co. v. Coleman, 28/449; Ashman v. F. & P. M. Ry. Co., 90/572; Webster v. Symes, 109/1. It consists in a want of that reasonable care which would be exercised by a person of ordinary prudence under all existing circumstances.—D. & M. R. Co. v. Van Steinburg, 17/118-19. Negligence implies fault.—Alpena v. Churchill, 53/615; Burke v. Parker, 107/88. It is the failure to observe that degree of care which the law requires for the protection of the interests likely to be injuriously affected by the want of.—F. & P. M. Ry. Co. v. Stark, 38/717; Brown v. Street Railway, 49/153; Kendrick v. Fowle, 60/367; Webster v. Symes, 109/1. Negligence in law is a relative term and implies the non-observance of, or omission to perform, a duty which is prescribed by law, or it arises from the situation of the parties and circumstances surrounding a transaction.—Kelly v. M. C. R. Co., 65/190. It is negligence to allow coal bins so close to its tracks that persons upon an excursion train cannot safely stand, while passing upon them, upon the running board that stretches along the side of car.—Dickinson v. P. H. & N. W. Ry. Co., 53/43. It is negligence not to slacken the speed of a train so that it can be stopped, if necessary, if the engineer has seen an object on the track a long way off and cannot tell what it is.—Keyser v. C. & G. T. Ry. Co., 56/599. A railroad company is guilty of negligence in maintaining the usual rate of speed when approaching a highway crossing, without observing the usual precaution and giving the required danger signals to warn the public of the approach of the train.—Thayer v. F. & P. M. R. Co., 93/154. Where the jury finds specially that but one of the statutory signals was given before crossing a highway, the negligence of the company is established.—Jensen v. M. C. R. Co., 102/176. It is gross negligence to back a train across a main street in a village, without a brakeman at the rear end as a lookout, and in readiness to apply the brakes in case of danger.—Cooper v. L. S. & M. S. Ry. Co., 66/261. See, also, as to negligence, Lambreck v. Railroad Co., 106/512; Tubbs v. M. C. R. Co., 107/108; Burke v. Parker, *Id.* 88; La Fond v. Street Railway Co., 131/586; Bartle v. Street Railway Co., 132/290; Noe v. Rapid Railway Co., 132/152; Seecombe v. Electric Railway, 133/170; Airikainen v. Street Railway Co., 138/194. When in the exercise of common prudence, a person may reasonably think there is time to cross a street railway, safely, he is not chargeable with negligence in attempting it.—Chauvin v. United Railway, 135/85. An open vestibule

door, on a fast moving train, held to be negligence.—*Robinson v. C. & A. R. Co.*, 135/255. Not negligence, as a matter of law, for an engine to follow closely after a train, when intended to push the train up a grade.—*Barnum v. Railway Co.*, 137/580. Negligence of railroad company in not providing a safely constructed privy, which it invites its customers to use.—*Howe v. Railroad Co.*, *Roach v. Railroad Co.*, 139/638. A rate of 40 or 50 miles an hour for an interurban car not per se negligence.—*Folkmire v. M. U. Rys. Co.*, 157/159. Negligence of manufacturer in placing on the market an explosive compound for blacking stoves without a label or notice.—*Clement v. Crosby & Co.*, 157/643. No action lies for death of infant killed while attempting to jump off a flat car on which he was riding without permission of the company.—*Seeley v. Railway Co.*, 157/688. Negligence per se in starting street car while party is trying to get aboard.—*Beattie v. D. U. Ry.*, 158/243. See, also, *Hull v. D. U. Ry.*, 158/682; *Reese v. D. U. Ry.*, 159/600; *Orth v. Traction Co.*, 162/353. Neglect to guard a rip saw by a device ordered installed by factory inspector is negligence per se.—*Van Doorn v. Heap*, 160/199. Not negligence, as a matter of law, for plaintiff to ride on top of the freight car.—*Meyers v. Detroit & Charlevoix R. Co.*, 166/403. Gross negligence defined.—*Knickerbocker v. Railway Co.*, 167/596; *Putt v. G. R. & I. Ry. Co.*, 171/216. While the violation of the speed-ordinance of a city is evidence of negligence, it is not alone negligence which justifies recovery.—*Mollica v. M. C. R. Co.*, 170/96. Not gross negligence.—*Holmes v. D., G. H. & M. Ry. Co.*, 171/633. On the subject of gross negligence, consult *Cardinal v. Houghton Co. Street Ry. Co.*, 174/22; *Fike v. P. M. R. Co.*, 174/167; *Reimers v. Saginaw-Bay City Ry. Co.*, 174/457.

NEGLIGENCE DETERMINED BY CIRCUMSTANCES: Negligence depends too much on the circumstances of the transaction complained of to be capable of any absolute definition by special facts. To determine whether it exists, all the circumstances must be regarded.—*Marcott v. M. H. & O. R. Co.*, 47/5-6. And a person in apparent danger has the right to act upon circumstances as they appear to him at the time, although subsequent investigation may show that he erred.—*C. & N. E. Ry. Co. v. Miller*, 46/538; *Staal v. G. R. & I. R. Co.*, 57/245; *Fehrich v. M. C. R. Co.*, 37/612; *Strand v. C. & W. M. Ry. Co.*, 64/219. While age and sex are to be taken into account with all the other circumstances, yet no less care is required of a woman than of a man. Sex is no excuse for negligence.—*Hessenyer v. M. C. R. Co.*, 48/209. Further, as to negligence determined by surrounding circumstances.—*McDougal v. Chicago, etc., Co.*, 51/628; *Palmer v. D. D. & L. M. R. Co.*, 56/1; *Young v. Detroit, etc., Co.*, 56/430; *Geveke v. G. R., etc., Co.*, 57/589; *Peterson v. Chicago, etc., Co.*, 64/621; *Cooper v. L. S. & M. S. Ry. Co.*, 66/261; *Baker v. F. & P. M. R. Co.*, 68/90; *Fehrich v. M. C. R. Co.*, 87/606; *Irvine v. F. & P. M. R. Co.*, 89/416; *Kelly v. M. C. R. Co.*, 65/190; *Jakoboski v. G. R. & I. R. Co.*, 106/440; *Murphy v. M. C. R. Co.*, 107/627; *McDonald v. Railway Co.*, 137/392; *McLean v. P. M. R. Co.*, 137/482; *Selby v. United Railway*, 141/112. When failure to maintain safety devices at a dangerous crossing is actionable negligence.—*Folkmire v. M. U. Rys. Co.*, 157/159; *Clark v. Jackson Consolidated Traction Co.*, 167/694.

IMMATERIAL NEGLIGENCE: Negligence which does not contribute to results need not be regarded.—*Marcott v. M. H. & O. R. Co.*, 47/6. The uniting of immaterial charges of negligence with those which are material and necessary, in a declaration, does not preclude recovery. The trial court will eliminate the immaterial charges and limit the jury's consideration to those facts which, if found to exist, constitute negligence.—*Thompson v. T. A. A. & N. M. Ry. Co.*, 91/260. Immaterial acts of negligence need not be proved, if alleged.—*Thayer v. F. & P. M. R. Co.*, 93/154. Previous negligence on the part of an engineer, if established, is not important, unless he is shown to have been negligent at the time of his injury.—*Thompson v. L. S. & M. S. Ry. Co.*, 84/281.

COMPARATIVE NEGLIGENCE: The doctrine of comparative negligence, as recognized by the courts of some of the other states, is not adopted or recognized by our court.—*Mynning v. D. L. & N. R. Co.*, 59/260; *Matta v. C. & W. M. Ry. Co.*, 69/112. See *L. S. & M. S. R. Co. v. Miller*, 25/278.

QUESTION OF LAW OR FACT: As a general rule the question of negligence is question of fact and not of law.—*D. & M. R. Co. v. Van Steinburg*, 17/118; *Ashman v. Railway Co.*, 90/574; *Rademacher v. Railway Co.*, 158/552; *Niedzinski v. B. C. Trac. & Elec. Co.*, 160/517; *Orth v. Traction Co.*, 162/353. It is frequently difficult, perhaps sometimes impossible, to determine how far the question of negligence or reasonable diligence is a question of law, and how far a question of fact. It is generally a question of mixed law and fact. Some principle of law will be applicable to the particular state of facts and may be laid down by the court. The principle may be very general and abstract, but there is still a legal principle involved.—*L. S. & M. S. R. Co. v. Miller*, 25/294. If there is any conflict in the testimony in a negligence case, either as to defendant's negligence or as to contributory negligence on the part of the person injured, the case must go to the jury; but if, upon either point, there is no conflict, then it becomes a question of law and a verdict should be directed.—*Underhill v. C. & G. T. Ry. Co.*, 81/43, citing *Mynning v. Railroad Co.*, 64/93. See also, *Gebhard v. D. G. H. & M. Ry. Co.*, 79/586; *Apsey v. D. L. & N. R. Co.*, 83/440; *Chadderdon v. M. C. R. R. Co.*, 100/293; *Jakoboski v. G. R. & I. R. Co.*, 106/440; *Kaiser v. D. & N. Railway*, 131/506. A rate of 40 or 50 miles an hour, for an interurban

car, not per se negligence.—*Folkmire v. M. U. Rys. Co.*, 157/159. See also, "Question for jury."

COMPANY CHARGEABLE: Under what circumstances the company will be held chargeable with negligence.—*M. C. R. Co. v. Coleman*, 28/440; *Malmsten v. M. H. & O. R. Co.*, 49/94; *Dickinson v. P. H. & N. W. Ry. Co.*, 53/43; *Bonnomeester v. G. R. & I. R. Co.*, 63/557; *Battishill v. Humphreys*, 64/514; *Keyser v. C. & G. T. Ry. Co.*, 56/559; *C. & N. E. Ry. Co. v. Miller*, 46/532; *Henry v. L. S. & M. S. Ry. Co.*, 49/495; *Guggenheim v. L. S. & M. S. Ry. Co.*, 66/150; *Cooper v. L. S. & M. S. Ry. Co.*, 66/261; *Town v. M. C. R. R. Co.*, 84/214; *Ashman v. F. & P. M. R. Co.*, 90/567; *Wood v. L. S. & M. S. Ry. Co.*, 49/370; *McKone v. M. C. R. Co.*, 51/601; *Patterson v. W. S. T. L. & P. Ry. Co.*, 54/91; *Cross v. L. S. & M. S. Ry. Co.*, 69/363; *Jeffrey v. D. L. & N. R. Co.*, 108/221; *Woods v. C. & G. T. Ry. Co.*, 108/396; *Swanson v. Menominee Elec. St. & Pow. Co.*, 113/603; *Etson v. Ft. W. & B. I. Ry. Co.*, 114/605; *Mensing v. M. C. R. Co.*, 117/606; *Shaw v. C. & G. T. Ry. Co.*, 123/629; *Plumb v. Hecla Co.*, 157/562; *Dugan v. Railroad Co.*, 158/450; *Galloway v. D. U. Ry.*, 168/343.

COMPANY NOT CHARGEABLE: Under what circumstances companies have been held not chargeable with negligence.—*C. & N. W. Ry. Co. v. Smith*, 46/504; *Blair v. G. R. & I. R. Co.*, 60/124; *Battishill v. Humphreys*, 64/494; *Early v. L. S. & M. S. Ry. Co.*, 66/349; *Bird v. F. & P. M. R. Co.*, 86/79; *Flagg v. C. D. & C., G. T. J. Ry. Co.*, 96/30; *Schaible v. L. S. & M. S. Ry. Co.*, 97/318; *La Pierre v. C. & G. T. Ry. Co.*, 99/212; *Porter v. C. W. M. Ry. Co.*, 80/156; *Lambeck v. G. R. & I. R. Co.*, 106/512; *Mueller v. L. S. & M. S. Ry. Co.*, 105/487; *G. R. & I. R. Co. v. Huntley*, 38/537; *Murphy v. M. C. R. Co.*, 107/627; *Perry v. M. C. R. Co.*, 108/130; *Guilloz v. Ft. W. & B. I. Ry. Co.*, 108/41; *Fenlon v. D., S. S. & A. Ry. Co.*, 108/284; *Grunst v. Railway Co.*, 109/342; *Etson v. Railway Co.*, 110/494; *Hennig v. Globe Foundry Co.*, 112/616; *Clark v. M. C. R. Co.*, 113/24; *Kaumeier v. Railway Co.*, 116/306; *Piskorowski v. Railway Co.*, 121/498; *Vandercreek v. Railroad Co.*, 125/459; *Trudell v. G. T. R. Co.*, 126/73; *Cron v. T. & M. Ry.*, 132/497; *Turner v. D. S. R. Co.*, 137/142; *Goodfellow v. D. U. Ry.*, 155/578; *Winnie v. L. S. & M. S. Ry. Co.*, 160/334; *Woods v. White Star Line*, 160/540; *Konieczny v. Railway Co.*, 164/66; *Barto v. Detroit Iron & Steel Co.*, 164/135; *Jolly v. M. C. R. Co.*, 167/185; *Berry v. Harbor Springs Ry. Co.*, 173/181.

CARE REQUIRED OF INDIVIDUALS: As to the degree of care required of individuals to avoid danger, consult: *Daniels v. Clegg*, 28/32, 40; *G. R. & I. R. Co. v. Martin*, 41/667; *Marcott v. M. H. & O. R. Co.*, 47/1; *Hassenyer v. M. C. R. Co.*, 48/209; *Apsey v. D., L. & N. R. Co.*, 83/440; *Helbig v. M. C. R. Co.*, 85/359; *Bird v. F. & P. M. R. Co.*, 86/79; *Fehnrich v. M. C. R. Co.*, 87/606; *Schaible v. L. S. & M. S. Ry. Co.*, 97/318; *Minock v. D., G. H. & M. Ry. Co.*, 97/425; *McDuffie v. L. S. & M. S. Ry. Co.*, 98/356; *Redson v. M. C. R. Co.*, 120/671; *Starbard v. Railway Co.*, 122/23. The methods of moving cars by "staking" is not a matter that the general public have knowledge of, and it is competent to show that the person injured thereby was ignorant of such practice as bearing upon his own exercise of care.—*Helbig v. M. C. R. Co.*, 85/359. A train standing upon a highway with an engine attached is of itself notice of danger to one desiring to cross.—*Bird v. F. & P. M. R. Co.*, 86/79. The ownership of a railroad company in its tracks upon a public street crossing is not such as to make a man a trespasser unless he travels squarely across them.—*Fehnrich v. M. C. R. Co.*, 87/606.

NEGLIGENCE MUST BE PROVED: The liability of a common carrier to its injured employe rests upon a negligent act.—*Hollingshead v. D., G. H. & M. Ry. Co.*, 181/547. Negligence cannot be presumed, but must be affirmatively proved.—*Brown v. St. Ry. Co.*, 49/153; *G. R. & I. R. Co. v. Huntley*, 38/537; *L. S. & M. S. R. Co. v. Miller*, 25/274; *D. & M. Ry. Co. v. Van Steinburg*, 17/99; *C. & N. W. Ry. Co. v. Smith*, 46/504; *Henry v. L. S. & M. S. Ry. Co.*, 49/495; *Mitchell v. C. & G. T. Ry. Co.*, 51/236; *G. R. & I. R. Co. v. Judson*, 34/506; *Thompson v. L. S. & M. S. Ry. Co.*, 84/281; *Bond v. Railway Co.*, 128/577; *Conroy v. United Railway*, 139/173; *White v. L. S. & M. S. Ry. Co.*, 156/480. And the burden of proving defendants' negligence and plaintiff's reasonable care is on plaintiff.—*Shaddock v. G. R. & I. Ry. Co.*, 179/433. Negligence may be inferred from facts proved, but never from mere conjecture.—*Hewitt v. F. & P. M. R. Co.*, 67/72. Negligence cannot be presumed where nothing is done out of the usual course of business, unless that course itself is improper. There must be some special circumstances calling for more particular care or caution in order to make a liability.—*Mitchell v. C. & G. T. Ry. Co.*, 51/239, citing *Stevenson v. G. T. R. Co.*, 34/323; *G. R. & I. R. Co. v. Judson*, 34/506; *F. & P. M. Ry. Co. v. Stark*, 38/714; *Downey v. Hendrie*, 46/498; *M. C. R. Co. v. Coleman*, 28/440; *Haas v. G. R. & I. R. Co.*, 47/401; *C. & N. W. Ry. Co. v. Smith*, 46/504; *Brown v. C. & B. St. Ry. Co.*, 49/153; *Henry v. L. S. & M. S. Ry. Co.*, 49/495. See, also, *Guilloz v. Railway Co.*, 108/41. There is no legal liability for purely accidental injuries.—*Mitchell v. C. & G. T. Ry. Co.*, 51/239. In order to create a liability something must have been brought about which would not probably have happened if the party complained of had not failed to use the care and precaution which it was wrong not to use under the circumstances.—*Marcott v. M. H. & O. R. Co.*, 47/56. Evidence insufficient to justify submission of question of negligence to the jury.—*Jakoboski v. Railroad Co.*, 106/440. The mere fact that an

accident occurred is not evidence of negligence.—*Whitcomb v. Electric Railway*, 125/572. Insufficient evidence of negligence.—*Frohriep v. Railway Co.*, 131/459; *Cole v. Electric Railway*, 132/122. When negligence of one cannot be imputed to another.—*Hampel v. Railway Co.*, 138/1. Evidence of prior accidents of a similar kind is admissible only to show notice and knowledge of the defects.—*Gregory v. United Railway*, 138/368. No negligence shown.—*Bottje v. Railway Co.*, 157/351; *Perego v. L. S. & M. S. Ry. Co.*, 158/225. Proof of negligence.—*Sewell v. D. U. Ry.*, 158/407. What not proof of negligence.—*Edwards v. Engadine Lumber Co.*, 158/428. Evidence tending to show negligence.—*Niblock v. Ann Arbor R. Co.*, 158/582. Decrease and increase of speed in running electric cars not proof of negligence.—*Schultz v. M. U. Rys. Co.*, 158/665. Negligence cannot be established alone by proof of an injury.—*O'Donnell v. Lange*, 162/654. Nor by the fact that an injury has resulted from certain conduct.—*Brown v. Bryant*, 166/180. Evidence held not to show.—*Felske v. D. U. Ry.*, 166/367. Not sufficient evidence of negligence to submit case to jury.—*Johnson v. Jackson*, 168/149.

CONTRIBUTORY NEGLIGENCE: If the plaintiff's own negligence contributed to cause the injury of which he complains he cannot recover.—*Williams v. M. C. R. Co.*, 2/265; *M. C. R. Co. v. Leahey*, 10/198; *D. & M. Ry. Co. v. Van Steinburg*, 17/110; *Davis v. D. & M. Ry. Co.*, 20/126; *L. S. & M. S. R. Co. v. Miller*, 25/277; *Kelly v. Hendrie*, 26/257; *Daniels v. Clegg*, 28/32; *M. C. R. Co. v. Coleman*, 28/440; *Lyon v. D. L. & L. M. R. Co.*, 31/429; *M. C. R. Co. v. Campau*, 35/468; *Mabley v. Kittleberger*, 37/360; *Le Baron v. Joslin*, 41/315; *M. H. & O. R. Co. v. Spear*, 44/169; *L. S. & M. S. Ry. Co. v. Bangs*, 47/470; *Haas v. G. R. & I. R. Co.*, 47/401; *Bresnahan v. M. C. R. Co.*, 49/410; *Mahlen v. L. S. & M. S. Ry. Co.*, 49/585; *Pzolla v. M. C. R. Co.*, 54/273; *Rhoades v. C. & G. T. Ry. Co.*, 58/263; *Blair v. G. R. & I. R. Co.*, 60/124; *Potter v. F. & P. M. R. Co.*, 62/22; *Kelly v. M. C. R. Co.*, 65/186; *Strand v. C. & W. M. Ry. Co.*, 67/380; *Kwiatkowski v. G. T. Ry. Co.*, 70/549; *French v. D., G. H. & M. Ry. Co.*, 89/537; *Graf v. C. & N. W. Ry. Co.*, 94/579; *Flagg v. Chicago, etc., Ry. Co.*, 96/30; *Geist v. Detroit City Ry.*, 91/440; *Cornell v. Detroit Elec. Ry. Co.*, 82/495; *Mahan v. Clee*, 87/161; *Kalembach v. M. C. R. Co.*, 87/509; *Schaible v. L. S. & M. S. Ry. Co.*, 97/318; *Houghton v. C. & G. T. Ry. Co.*, 99/308; *Chadderdon v. M. C. R. Co.*, 100/293; *Benage v. L. S. & M. S. Ry. Co.*, 102/72, 79; *Jensen v. M. C. R. Co.*, 102/176; *Duvall v. M. C. R. Co.*, 105/386; *Bradley v. C. & G. T. Ry. Co.*, 107/243; *Graff v. Detroit Cit. Ry. Co.*, 109/77; *Richfield v. M. C. R. Co.*, 110/406; *Tobias v. M. C. R. Co.*, 103/330; 110/440; *Phillips v. D., G. H. & M. Ry. Co.*, 111/274; *Peck v. G. T. W. R. Co.*, 155/430; *Sargeant v. City of Detroit*, 156/291; *Rouse v. M. U. Rys. Co.*, 158/109; *Wight v. M. C. R. Co.*, 161/216; *Davis v. D. U. Ry.*, 162/240; *Kneeshaw v. D. U. Ry.*, 169/697; *Drouillard v. D. U. Ry.*, 170/444; *Putt v. G. R. & I. Ry. Co.*, 171/216; *Leary v. Traction Co.*, 171/365; *Puffer v. Traction & Lighting Co.*, 173/193. Unless it also appears that defendant was chargeable with gross negligence.—*Cardinal v. Houghton Co. St. Ry. Co.*, 174/22. A plaintiff whose negligence is either subsequent to, or concurrent with that of the defendant, cannot recover.—*Labarge v. P. M. R. Co.*, 134/139. The absence of contributory negligence on the part of the plaintiff is, therefore, just as essential an element in the cause of action as the negligence of the defendants, and just as clearly constitutes a necessary part of the plaintiff's case; and until he has shown it or until it in some way appears from the evidence, he does not make a *prima facie* case.—*L. S. & M. S. R. Co. v. Miller*, 25/282; *M. C. R. Co. v. Coleman*, 28/449; *Le Baron v. Joslin*, 41/315. But the absence of contributory negligence is not necessary to be shown beyond cavil or question, to entitle plaintiff to go to the jury. The judge takes the case from the jury only when it is susceptible of but just one opinion.—*Mynning v. D., L. & N. R. Co.*, 64/100; *Tipel v. Hilsendegen*, 44/462. Contributory negligence presupposes the doing of some act which ought not to be done or the omission to do something which should be done, in other words, a want of due care.—*Swoboda v. Ward*, 40/424. Contributory negligence depends upon what the party was bound to anticipate under the circumstances.—*Staal v. G. R. & I. R. Co.*, 57/245. Age, intelligence and experience help determine whether a person has been guilty of contributory negligence.—*Swoboda v. Ward*, 40/425. And age and sex may be taken into account; but no less care is required of a woman than of a man.—*Hassenger v. M. C. R. Co.*, 48/209. In determining the question of contributory negligence of an operator whose duty lies in the line of danger, all the circumstances must be considered, particularly those exigencies which render the prompt performance of his duty necessary.—*Irvine v. F. & P. M. R. Co.*, 89/421. Intoxication may be contributory negligence. A man cannot voluntarily put himself in a condition whereby he loses such control of his brain or muscles as a man of ordinary prudence and caution in the full possession of his faculties would exercise, and by such loss of control contribute to an injury to himself, and then require of one ignorant of his condition recompense therefor.—*Strand v. C. & W. M. Ry. Co.*, 67/385. See also, *M., H. & O. R. Co. v. Handford*, 39/537. But intoxication does not constitute negligence as a matter of law, but is a circumstance to go to the jury on the question of contributory negligence.—*Kingston v. Ft. W. & E. Ry. Co.*, 112/40, 45; *Fox v. M. C. R. Co.*, 138/433. It is contributory negligence for a switchman to ride in a sitting posture upon the beam of the road engine's pilot, with his feet hanging down over the cow-

catcher.—*Glover v. Scotten*, 82/369; *Benage v. L. S. & M. S. Ry. Co.*, 102/72, 76, 79. The authorities are quite uniform that jumping from a moving train, before it has reached the station, and boarding a train while in motion, are presumptively negligent acts and in many cases are negligent per se; so, also, is the act of jumping from a train which is running past the station where the passenger desires to stop, (*L. S. & M. S. Ry. Co. v. Bangs*, 47/470; *Kirchner v. Detroit City Ry. Co.*, 91/400.) But it is not negligent per se for a passenger to alight from a train after it has stopped and he has been invited to alight and while doing so the train is again started, especially when the brakeman assists, unless the speed of the train is such that the danger is obvious.—*McCaslin v. L. S. & M. S. Ry. Co.*, 93/553; *Cousins v. L. S. & M. S. Ry. Co.*, 96/389; *Blair v. G. R. & I. R. Co.*, 60/131. Passengers must conform to the business arrangements of the company and avoid risks of danger.—*M. C. R. Co. v. Coleman*, 28/440; *L. S. & M. S. Ry. Co. v. Bangs*, 47/470. As to negligence of passengers.—*Strand v. C. & W. M. Ry. Co.*, 64/216. It is contributory negligence to turn cattle at large in the public highway near a railroad crossing without a keeper.—*Robinson v. F. & P. M. R. Co.*, 79/323; *Niemann v. M. C. R. Co.*, 80/197. If the servant violates a rule of his master and such violation is the proximate cause of his injury, he is guilty, as matter of law, of contributory negligence.—*Fernette v. P. M. R. Co.*, 175/653. What has been held not to be contributory negligence.—*G. R. & I. R. Co. v. Martin*, 41/667; *Hassenyer v. M. C. R. Co.*, 48/205; *Cartwright v. C. & G. T. Ry. Co.*, 52/606; *McDonald v. M. C. R. Co.*, 108/7; *Green v. C. & W. M. Ry. Co.*, 110/648; *Penrose v. Fehr*, 113/517; *Bush v. Railway Co.*, 113/513; *Manor v. Railway Co.*, 118/1; *Moore v. Railroad Co.*, 119/613; *Mott v. Railway Co.*, 120/127; *Shadford v. Railway Co.*, 121/224; *Bradburn v. Wabash Railroad Co.*, 134/575; *Rouse v. Electric Railway Co.*, 135/545; case cited in 137; *McVean v. United Railway*, 138/263; *Morgan v. Railway Co.*, 138/626; *Hodgins v. Bay City*, 156/687; *Johnson v. Desmond Chemical Co.*, 156/669; *Dugan v. Railroad Co.*, 158/450; *Schultz v. M. U. Rys. Co.*, 158/665; *Haxer v. Griessel*, 162/310; *Wavle v. M. U. Rys. Co.*, 170/81; *Imus v. Ann Arbor R. Co.*, 172/292; *Hibbler v. D. U. Ry. Co.*, 172/368; *Cardinal v. Houghton Co. St. Ry. Co.*, 174/22; *Richardson v. D. U. Ry.*, 176/160; *Seebach v. M. U. Rys. Co.*, 171/1; *Scott v. B. C., G. & A. R. Co.*, 182/514. What deemed contributory negligence.—*Braudy v. Railway Co.*, 107/100; *Niles v. Railway Co.*, 107/238; *Saner v. Railway Co.*, 108/31; *Bradley v. G. T. Ry. Co.*, 107/243; *Secord v. C. & M. L. S. R. Co.*, Id. 540; *Schneekloth v. C. & W. M. Ry. Co.*, 108/1; *Graff v. Railway Co.*, 109/77; *Vreeland v. C. S. & M. S. R. Co.*, Id. 585; *Richfield v. M. C. R. Co.*, 110/406; *Tobias v. M. C. R. Co.*, Id. 440; *Phillips v. Railway Co.*, 111/274; *Bannister v. Railway Co.*, 113/530; *Knapp v. Railway Co.*, 114/199; *Lyons v. St. Ry. Co.*, 115/114; *Hine v. Railway Co.*, 115/204; *Borschall v. Railway*, 115/473; *Henderson v. Railway Co.*, 116/368; *Bond v. Railway Co.*, 117/652; *Doherty v. Railway Co.*, 118/209; *Stewart v. M. C. R. Co.*, 119/91; *Buckley v. Railroad Co.*, 119/583; *Lau v. Railway Co.*, 120/115; *McCarthy v. Railway Co.*, 120/400; *Carlson v. Railroad Co.*, 120/481; *Brinker v. M. C. R. Co.*, 121/283; *Tucker v. Railway Co.*, 122/149; *Pahlan v. Railway Co.*, 122/232; *Britton v. M. C. R. Co.*, 122/359; *Bennett v. Railway Co.*, 123/692; *Mertz v. Railway Co.*, 125/11; *Trudell v. G. T. R. Co.*, 126/73; *Merritt v. Foote*, 128/367; *Nieboer v. Electric Railway*, 128/486; *Doty v. Railway Co.*, 129/464; *Spaven v. Railway Co.*, 130/579; *Freeman v. P. M. R. Co.*, 131/544; *Chapman v. P. M. R. Co.*, 133/311; *Boutell v. M. C. R. Co.*, 133/486; *De Cair v. Railroad Co.*, 133/578; *Sosnofski v. Railway Co.*, 134/72; *Proper v. Railway Co.*, 136/352; *King v. A. A. R. Co.*, 137/487; *Johnson v. Railway*, 140/292; *Strong v. G. T. W. Ry. Co.*, 156/66; *Steger v. Immen*, 157/494; *Scharman v. Bay Co. Bridge Commission*, 157/77; *Perego v. L. S. & M. S. Ry. Co.*, 158/225; *Connor v. L. S. & M. S. Ry. Co.*, 158/688; *Stenzhorn v. City Electric Ry. Co.*, 159/82; *West v. D. U. Ry.*, 159/269; *Reid v. Harmon*, 161/51; *Gehl v. Pittsburg Coal Co.*, 163/285; *Taylor v. Home Telephone Co.*, 163/458; *Levy v. Houghton Co. St. Ry. Co.*, 164/572; *Cardinal v. Houghton Co. St. Ry. Co.*, 165/155; *Klimowicz v. Parker, Webb & Co.*, 166/203; *Hamilton v. D. U. Ry.*, 167/5; *Stevenson v. D. U. Ry.*, 167/45; *Wilson v. D. U. Ry.*, 167/107; *Jones v. P. M. R. Co.*, 168/1; *Clark v. D. U. Ry.*, 168/457; *Construction Co. v. Railway Co.*, 173/1; *Westover v. Grand Rapids Ry. Co.*, 180/373. Evidence on question of contributory negligence.—*Holman v. U. St. Ry. Co.*, 114/208; *Britton v. M. C. R. Co.*, 118/491; *Storrie v. Elevator Co.*, 134/297. An employe killed by reason of alleged neglect of his employer is, in the absence of evidence to the contrary, presumed to have exercised due care.—*Gilbert v. Ann Arbor R. Co.*, 161/73. But it is only where no witnesses to an accident are produced that the presumption prevails that a person killed exercised due care.—*Gates v. Beebe*, 170/107. How contributory negligence imputed as between parent and infant child.—*Feldman v. D. U. Ry.*, 162/486; *Love v. Railroad Co.*, 170/1. Contributory negligence of child.—*Knickerbocker v. Railway Co.*, 167/596; *Love v. Railroad Co.*, 170/1; *Mollica v. M. C. R. Co.*, 170/96.

IMMATERIAL CONTRIBUTORY NEGLIGENCE: There are cases where the person injured or killed may have been negligent; yet, if the employes of the railroad company are wanton, wilful or reckless in the premises, the contributory negligence of such person will not prevent a recovery for the injury. (See *Bouwmeester v. R. Co.*, 63/557.) But the mere neglect to

give signals at country crossings is not such gross negligence as to destroy the legal effect of contributory negligence upon the plaintiff's case.—*Matta v. C. & W. M. Ry. Co.*, 69/113. See also *Battishill v. Humphreys*, 64/521. In actions not under the common law, but arising from statutory regulations imposing duties, as of fencing, the contributory negligence of the injured party is not material.—*F. & P. M. Ry. Co. v. Lull*, 28/515; *G. R. & I. R. Co. v. Cameron*, 45/451. See *Gage v. P., O. & N. R. Co.*, 105/335. When deemed not to have contributed to the injury or to have been immaterial.—*McDonald v. M. C. R. Co.*, 108/7. When violation of company's rules not deemed to prevent action for damages by employee.—*Fluhrer v. Railway Co.*, 124/482. What does not excuse violation of rules.—*Nichols v. Railway Co.*, 125/394. See, also, as to violation, *Jarvis v. Railroad Co.*, 128/61; *McKernan v. Street Railway*, 138/519.

INJURIES TO CHILDREN: When the age, experience and intelligence of the child are considered, together with the other circumstances existing at the time of the accident, and the jury find that the child is capable of understanding the danger and the signals and warnings against it, and the manner in which an injury may result if the warnings are not observed, they are then warranted in considering the question of contributory negligence; and when such a child is injured by failure to heed the warnings and indications of danger, its own negligence will prevent a recovery. Such is the settled rule of the authorities.—*Baker v. F. & P. M. R. Co.*, 68/94, citing *Railway Co. v. Bohn*, 27/503; *Daniels v. Clegg*, 28/40; *Hassenyer v. Railroad Co.*, 48/209; *Powers v. Harlow*, 53/515; *Hargreaves v. Deacon*, 25/1; *Railway Co. v. Smith*, 46/504; *Downey v. Hendrie*, 46/209; *Ecliff v. Railway Co.*, 64/196; *Coops v. Railway Co.*, 66/448. See, also, *Keyser v. C. & G. T. Ry. Co.*, 56/559; 66/390; *Battishill v. Humphreys*, 64/514; *Schindler v. M. L. S. & W. Ry. Co.*, 87/400; *Green v. C. & W. M. Ry. Co.*, 110/648; *Lehman v. Iron & Steel Works*, 114/260; *Hine v. B. C. Consolidated St. Ry. Co.*, 115/204; *Allen v. Jakel*, 115/448; *Kaumeier v. Railway Co.*, 116/306; *Grenell v. M. C. R. Co.*, 124/141; *Trudell v. G. T. R. Co.*, 126/73; *Bledsoe v. G. T. R. Co.*, 126/312; *Finnegan v. M. C. R. Co.*, 127/15; *Snyder v. Railway Co.*, 131/418; *Coessens v. Rapid Railway Co.*, 136/481; *Hampel v. Railway Co.*, 138/1. When infant of 14 not guilty of negligence per se.—*Lund v. Sargent Mfg. Co.*, 158/3. While children non sui juris who invade private property are technically trespassers, they are not wilful trespassers, knowingly doing a wrong, or incurring risk, in a sense which would legally charge them with negligence or personal responsibility, as in the case of older persons who are under disability. *Huggett v. Erb*, 182/524. Company's duty toward an infant trespasser. *Verlinde v. M. C. R. Co.*, 165/371. Contributory negligence of child.—*Knickerbocker v. Railway Co.*, 167/596; *Love v. D., J. & C. R. Co.*, 170/1. See *Bowsher v. G. R. & I. Ry. Co.*, 174/339.

PERSONS APPROACHING TRACK: A railroad track is of itself a warning of danger.—*L. S. & M. S. R. Co. v. Miller*, 25/290; *Mynning v. D. L. & N. R. Co.*, 59/257, 260; 64/101; *Matta v. C. & W. M. Ry. Co.*, 69/112; *Helbig v. M. C. R. Co.*, 85/365; *Gardner v. D., L. & N. R. Co.*, 97/244; *Jensen v. Railroad Co.*, 102/180; *Braudy v. Railway Co.*, 107/100; *Phillips v. Railway Co.*, 111/274. And this rule applies as well to a side track as to the main line.—*Mynning v. D., L. & N. R. Co.*, 59/257; *Helbig v. M. C. R. Co.*, 85/365. So is a train standing across the highway with an engine attached a notice of danger.—*Bird v. F. & P. M. R. Co.*, 86/79. Persons approaching a track must use all necessary precautions; must stop, look and listen.—*L. S. & M. S. R. Co. v. Miller*, 25/290; *M. C. R. Co. v. Campau*, 35/468; *Mahnsten v. M., H. & O. R. Co.*, 49/94; *Young v. D. G. H. & M. Ry. Co.*, 56/430; *Rhoades v. C. & G. T. Ry. Co.*, 58/266; *Potter v. F. & P. M. R. Co.*, 62/25; *Mynning v. D. L. & N. R. Co.*, 64/93; *Guggenheim v. L. S. & M. S. Ry. Co.*, 66/150; *Cooper v. L. S. & M. S. Ry. Co.*, 66/261; *Baker v. F. & P. M. R. Co.*, 68/94; *Guta v. L. S. & M. S. Ry. Co.*, 81/291; *Brady v. T., A. A. & N. M. R. Co.*, 81/616; *Apsey v. D. L. & L. M. R. Co.*, 83/432; *Thomas v. C. & G. T. Ry. Co.*, 86/496; *Grostick v. D. L. & N. R. Co.*, 90/594; *Haas v. Railroad Co.*, 47/401; *Zolla v. Railroad Co.*, 54/273; *Potter v. Railroad Co.*, 62/22; *Matta v. Railway Co.*, 69/109; *Freeman v. Railway Co.*, 74/86; *Gebhard v. Railway Co.*, 79/586; *Underhill v. Railway Co.*, 81/43; *Shufelt v. F. & P. M. R. Co.*, 96/327; *Graf v. Railway Co.*, 94/579; *Gardner v. D., L. & N. R. Co.*, 97/240; *Houghton v. C. & G. T. Ry. Co.*, 99/308; *Dawe v. F. & P. M. R. Co.*, 102/307; *Jensen v. M. C. R. Co.*, 102/176; *Braudy v. D., G. H. & M. Ry. Co.*, 107/100; *Richfield v. Railroad Co.*, 110/406; *Osborn v. D., G. H. & M. Ry. Co.*, 115/102; *Stahl v. Railway Co.*, 117/273; *Strong v. G. T. W. Ry.*, 156/66; *Folkmire v. M. U. Rys. Co.*, 157/159; *Measel v. D. U. Ry.*, 166/688; *Gunterman v. M. C. R. Co.*, 168/37; *Manos v. D. U. Ry.*, 168/155. While this is the general rule, it is not of universal application. Every case must depend upon its own circumstances and the rule cannot be applied in all cases regardless of the condition of things at the time.—*Cooper v. L. S. & M. S. Ry. Co.*, 66/266. See *Guggenheim v. L. S. & M. S. Ry. Co.*, 66/150; *Breckenfelder v. L. S. & M. S. Ry. Co.*, 79/560; *Richmond v. C. & W. M. Ry. Co.*, 87/374; *Van Auken v. C. & W. M. Ry. Co.*, 96/307; *McCullough v. M., St. P. & S. M. Ry. Co.*, 101/234; *Evans v. Railroad Co.*, 88/442; *Morgan v. P. M. R. Co.*, 162/573. See, also, cases cited under "injuries to children." The legal presumption is that a person killed at a railroad crossing did stop, and look, and listen, and will prevail in the absence of direct and credible testimony on the subject.—*Mynning v. D., L. & N. R. Co.*,

64/93. Care required in crossing street car track.—Borschall v. Detroit Railway, 115/473; Coffee v. P. M. R. Co., 139/378; Potter v. P. M. R. Co., 140/362. Crossing street railway track.—Gold v. D. U. Ry., 169/178. A motorman is not bound to anticipate that a pedestrian crossing the track will place himself in a position of danger.—Gradyszewski v. D. U. Ry., 173/13.

PLEADINGS AND PROOFS: A declaration for negligent injury must set forth the duty which has been neglected and aver the neglect.—F. & P. M. Ry. Co. v. Stark, 38/714; M., H. & O. R. Co. v. Marcott, 41/435. Must state clearly and distinctly the act or omission constituting the negligence complained of.—Addison v. Railway Co., 48/155. Declaration held sufficient.—C. & N. E. Ry. Co. v. Miller, 46/532; Erickson v. M., L. S. & W. Ry. Co., 83/281; Steele v. Railway Co., 107/516. Schultz v. M. U. Rys. Co., 158/665; Lepard v. M. C. R. Co., 166/373. Insufficient declaration.—Kalembach v. M. C. R. Co., 87/509; Hammond v. M. C. R. Co., 162/431; Miller v. M. C. R. Co., 167/21. Form of declaration.—Mynning v. D., L. & N. R. Co., 64/95. Uniting immaterial charges of negligence with those that are material and necessary in a declaration will not preclude a recovery, it being the duty of the trial court to eliminate the immaterial charges from the consideration of the jury.—Thompson v. T., A. A. & N. M. Ry. Co., 91/255. When variance between allegations and proof is immaterial.—Ashman v. F. & P. M. R. Co., 90/567; Tubbs v. M. C. R. Co., 107/108; Potter v. Railway Co., 122/179. Evidence as to the giving of the statutory signals with a bell and whistle.—Shufelt v. F. & P. M. R. Co., 96/327; McDuffie v. L. S. & M. S. Ry. Co., 98/356; Sanborn v. D., B. C. & A. R. Co., 99/1; McCullough v. Minneapolis, etc., Ry. Co., 101/234. As to the admission of evidence in negligence cases, see Kelly v. D., L. & N. R. Co., 80/237; Lyttle v. C. & W. M. Ry. Co., 84/289; Helbig v. M. C. R. Co., 85/359; Palmer v. M. C. R. Co., 87/281; 93/363; Kalembach v. M. C. R. Co., 87/509; Thompson v. T. A. A. & N. M. Ry. Co., 91/255; Brennan v. M. C. R. Co., 93/156; Cole v. L. S. & M. S. Ry. Co., 95/77; Williams v. C., C. C. & St. L. Ry. Co., 102/537; M. C. R. Co. v. Coleman, 28/440; Wilkins v. D. U. Ry., 169/437. Evidence of contributory negligence.—Holman v. Union St. Ry. Co., 114/208. Proofs admissible under declaration.—Bush v. Railway Co., 113/513. Amendable defects in declaration.—Thomas v. Railroad Co., 114/59; Willet v. M. C. R. Co., 114/411. Question of whether a case was made under the pleadings reviewed.—Findlay v. C. & G. T. Ry. Co., 106/700. A declaration for death of the intestate, by an administrator may be amended so as to show damages sustained by the next of kin.—Garrity v. Railway Co., 112/369. Variance.—Britton v. M. C. R. Co., 122/359; Scherer v. Otis Elevator Co., 167/1. When mortality tables are inadmissible.—Leach v. Electric Railway, 125/373. Variance between declaration and proofs will not be considered on appeal, when not objected to on the trial.—Jarvis v. Railroad Co., 128/61. Evidence under declaration.—Leslie v. J. & S. Traction Co., 134/518. Evidence of negligence causing burning of building.—Potter v. G. T. W. Ry. Co., 157/216. Admissibility of evidence of uterine trouble under allegations of bodily and internal injuries, etc., Mueller v. D. U. Ry., 162/313. A claim for permanent injuries must be plainly averred.—Kaiser v. D. U. Ry., 167/288. Inadmissibility of mortality tables in evidence in case of child 27 months old, whose expectancy did not appear in the tables.—Morse v. D., G. H. & M. Ry. Co., 168/99. Declaration; counts.—Green v. M. C. R. Co., 168/104. Joinder of counts, 173/146.

BURDEN OF PROOF: The plaintiff is bound in all cases to show that the defendants are entirely responsible for the grievance complained of. It must appear that all the material negligence that led to the accident was on the part of the defendants and their agents, and that plaintiff did not contribute toward it. Plaintiff must establish completely whose fault it was and explain the whole transaction.—M. C. R. Co. v. Coleman, 28/447; D. & M. R. Co. v. Van Steinburg, 17/99; L. S. & M. S. R. Co. v. Miller, 25/274; Kelly v. Hendrie, 26/255; Guggenheim v. L. S. & M. S. Ry. Co., 66/159; Rawlings v. Clyde Plank Road Co., 158/143. Proof of absence of contributory negligence is just as essential to plaintiff's cause of action as is the proof of defendant's negligence.—L. S. & M. S. R. Co. v. Miller, 25/282; M. C. R. Co. v. Coleman, 28/449; LeBaron v. Joslin, 41/315. But absence of such negligence need not be shown beyond question; but the plaintiff is entitled to go to the jury.—Mynning v. D., L. & N. R. Co., 64/100; Teipel v. Hilsendegen, 44/462. Burden of proof on employe of incompetency of servant in employment of servant.—Secombe v. Electric Railway, 133/171. In an action by a passenger the burden of proof rests on the plaintiff to show negligence.—Thurston v. United Railway, 137/231. Burden of proof not shifted to defendant upon proof of a collision.—Sewell v. D. U. Ry., 158/407. Nor by plaintiff's evidence of derailment.—Niedzinski v. Bay City Traction, etc., Co., 160/517.

QUESTIONS FOR JURY: Where the facts are in dispute or are such that different minds may honestly draw different conclusions from them, the question of negligence and of contributory negligence belongs to the jury and not to the court.—C. & N. E. Ry. Co. v. Miller, 46/532; Palmer v. D., L. & L. M. R. Co., 56/1; Young v. D., G. H. & M. Ry. Co., 56/430; Mynning v. D., L. & N. R. Co., 64/93; Guggenheim v. L. S. & M. S. Ry. Co., 66/150; Breckenfelder v. L. S. & M. S. Ry. Co., 79/560; Underhill v. C. & G. T. Ry. Co., 81/43; Roux v. B. & D. Lumb. Co., 85/531; Harris v. Clinton Twp., 64/447; Luke v. Mining Co., 71/364; Adams v. Iron Cliff Co., 78/271; Breeze v. Powers, 80/172; Lowell v. Watertown Twp.,

58/568; Carver v. Plank Road Co., 61/584; Little v. St. Ry. Co., 78/205; Engel v. Smith, 82/1; Palmer v. Harrison, 57/183; Dundas v. Lansing, 75/499; Thomas v. C. & G. T. Ry. Co., 86/496; Richmond v. C. & W. M. Ry. Co., 87/374; Kalemback v. M. C. R. Co., 87/509; Sweet v. M. C. R. Co., 87/559; Fehnrich v. M. C. R. Co., 87/611; Evans v. L. S. & M. S. R. Co., 88/442; Teipel v. Hilsendegen, 44/461; Crosby v. Railway Co., 58/458; Alexander v. Big Rapids, 70/226; Archer v. Ry. Co., 87/101; Palmer v. M. C. R. Co., 87/281; Ashman v. Railroad Co., 90/573; Sheldon v. Railroad Co., 59/172; Thompson v. T. A. A. & N. M. Ry. Co., 91/255; Thayer v. F. & P. M. Ry. Co., 93/150; Selleck v. L. S. & M. S. Ry. Co., 93/375; Retan v. L. S. & M. S. Ry. Co., 94/146; Van Auken v. C. & W. M. Ry. Co., 96/307; McCullough v. M., St. P. & S. St. M. Ry. Co., 101/234; Eastman v. L. S. & M. S. Ry. Co., 101/97; McDonald v. M., S. P. & S. S. M. Railway Co., 105/659; Crane v. M. C. R. Co., 107/511; Balkoff v. M. C. R. Co., 106/606; Steele v. Railway Co., 107/516; Tubbs v. M. C. R. Co., 107/108; McDonald v. M. C. R. Co., 108/7; Green v. Railway Co., 110/648; Kingston v. Railway Co., 112/40; Blakeslee v. St. Ry. Co., 112/63; Bush v. St. Ry. Co., 113/513; Schoepper v. Hancock Chem. Co., Id. 582; Swanson v. Railway Co., 113/603; Thomas v. A. A. R. Co., 114/59; Holman v. Railway Co., 114/208; Lehman v. Eureka I. & S. Co., Id. 260; Willet v. M. C. R. Co., 114/411; Etson v. Railway Co., 114/605; Moore v. Railroad Co., 115/103; Greenfield v. Railway Co., 117/307; Cross v. Railway Co., 120/137; Ryan v. Railway Co., 123/597; Grenell v. M. C. R. Co., 124/141; Moran v. Railway Co., 124/582; Mann v. Railway, 125/11; Jones v. Railroad Co., 127/198; Rouse v. Electric Railway, 128/149; Wagner v. M. C. R. Co., 128/669; Monroe v. Railway Co., 129/309; Richard v. Railway Co., 129/458; Haines v. Railway Co., 129/475; Quirk v. Rapid Railway, 130/654; Gaukler v. Railway Co., 130/666; Boettcher v. Street Railway Co., 131/295; Smalley v. D. & M. Ry. Co., 131/560; Plant v. Heraty, 131/619; Bedell v. Railway, 131/668; Brunick v. Railroad Co., 132/219; Hintz v. M. C. R. Co., 132/305; La Barre v. Railway Co., 133/192; Brown v. P., O. & N. R. Co., 133/371; Greenfield v. Railway Co., 133/557; De Cair v. Railroad Co., 133/578; Wallace v. L. S. & M. S. Ry. Co., 133/633; Sosnofski v. Railway Co., 134/73; Labarge v. P. M. R. Co., 134/139; Leslie v. J. & S. Traction Co., 134/518; Hennessy v. Traction & Lighting Co., 135/29; Chauvin v. United Railway, 135/85; Hamilton v. M. C. R. Co., 135/95; Perry v. United Railway, 135/515; Lucas v. Railway Co., 136/142; Smith v. P. M. R. Co., 136/224; Hinchman v. P. M. Ry. Co., 136/341; Howell v. Railway Co., 136/432; Thurston v. United Railway, 137/231; Quirk v. Rapid Railway, 137/493; McVean v. United Railway, 138/263; Shaller v. United Railway, 139/171; Coffee v. P. M. R. Co., 139/378; Hintz v. M. C. R. Co., 140/565; Plefka v. D. U. Ry., 155/53; Parker v. Union Station Ass'n, 155/72; Bladecka v. Bay City Traction, etc., Co., 155/253; Scheer v. D. U. Ry., 155/561; Potvin v. W. Bay City Shipbuilding Co., 156/201; Canerdy v. Pt. Huron, etc., R. Co., 156/211; Beck v. Ann Arbor R. Co., 156/252; Smith v. D. U. Ry., 155/466; Burgess v. Humphrey Bookcase Co., 156/345; McFarland v. Sayen, 156/426; Brininstool v. M. U. Rys. Co., 157/172; McQuisten v. Street Ry. Co., 157/492; Nelson v. Pittsburg Coal Dock Co., 158/306; Pierce v. Bidwell Thresher Co., 158/356; Rademacher v. Railway Co., 158/552; Hull v. D. U. Ry., 158/682; Kaukola v. Oliver Iron Mining Co., 159/689; MacDonald v. Freeman Mfg. Co., 160/380; McDonnell v. Central Drug Co., 160/455; Belmer v. Boyne City Tanning Co., 160/669; Gilbert v. Ann Arbor R. Co., 161/73; Jackson v. D. & M. Ry. Co., 161/163; Schulte v. M. C. R. Co., 162/76; Johnson v. L. S. & M. S. Ry. Co., 162/301; Haxer v. Griessel, 162/310; Hinkley v. Wabash R. Co., 162/546; Snow v. Escanaba Power Co., 162/579; Theisen v. D. U. Ry., 163/68; Cummings v. D. U. Ry., 163/304; Krettnich v. Chemical Wks., 163/462; Hosking v. Mining Co., 163/538; Dascho v. Mich. Alkali Co., 163/612; Larsen v. Home Telephone Co., 164/295; Putnam v. D. U. Ry., 164/342; Orso v. Great Lakes Engineering Co., 164/568; Formiller v. D. U. Ry., 164/653; Brogetski v. D. U. Ry., 166/91; Tietz v. G. T. R. Co., 166/205; Groesbeck v. G. T. Ry. Co., 167/259; Stolz v. G. H. & M. Ry. Co., 167/300; Clark v. Traction Co., 167/694; Graham v. Railway Co., 168/41; Anderson v. M. C. R. Co., 168/207; Cousineau v. Embury, 171/23; Felske v. D. U. Ry., 173/456. It is the right of the jury to judge of the sufficiency of the evidence introduced to establish any one or more facts in the case upon trial; but when there is a total defect of evidence as to any essential fact, the case should be withdrawn from the consideration of the jury.—Mynning v. D., L. & N. R. Co., 64/96; Conely v. McDonald, 40/158; Underhill v. Railway Co., 81/43. The court cannot properly pass upon the question of negligence, except in cases where the facts are such that all reasonable men would be likely to draw from them the same inference.—Sadowski v. Car Co., 84/105; L. S. & M. S. R. Co. v. Miller, 25/274; Moore v. S., T. & P. H. Ry. Co., 115/103. In a suit for injuries to a traveler at a public highway crossing, the jury has nothing to do with the habits or care, or want of care, of the plaintiff in crossing at the same place at other times, but the inquiry is limited to the particular time of the accident.—Guggenheim v. Railway Co., 66/160. Whether the highway was obstructed by cars was a question for the jury.—Young v. D., G. & M. Ry. Co., 56/430. Judicial notice will be taken that a box freight car standing still at a highway crossing is not of itself a frightful object to horses of ordinary gentleness, and is not a question for the jury.—Gilbert v. F. & P. M. Ry. Co., 51/488. The question

of the maturity of mental development of a child injured is properly submitted to the jury.—*Hine v. St. Ry. Co.*, 115/204. See *Knapp v. C. & W. M. Ry. Co.*, 114/199; *Allen v. Jakel*, 115/484. The question of whether proper inspection has been made is also a question for the jury.—*Woods v. Railway Co.*, 108/396. Further questions for the jury: *Dorrance v. M. U. Rys. Co.*, 175/198; *Erdman v. D. U. Ry.*, 175/691; *Sailsky v. D. U. Ry.*, 176/261; *Amanta v. M. C. R. Co.*, 177/280; *Wisniewski v. D., G. H. & M. Ry. Co.*, 177/481; *Foley v. D. & M. Ry. Co.*, 177/586; *Peters v. D. & M. Ry. Co.*, 178/481; *Charters v. Industrial Works*, 179/1; *Glappa v. D., G. H. & M. R. Co.*, 179/76; *Teachout v. G. R., G. H. & M. Ry. Co.*, 179/388; *Brush v. G. T. Ry.*, 179/398; *Bady v. D. U. Ry.*, 180/380; *Pirulewski v. D. U. Ry.*, 181/133; *Richardson v. D. & M. Ry. Co.*, 182/206; *Scott v. B. C., G. & A. R. Co.*, 182/514.

DAMAGES: Damages for personal injury include everything of which the person recovering them has been deprived as a direct and natural consequence of the injury.—*Huizega v. Cutler & Savidge Lumb. Co.*, 51/275. Plaintiff can recover, as a part of his damages, his reasonable and necessary outlays in an attempt to be cured of the injuries resulting from the negligence of the defendant.—*Sherwood v. C. & W. M. Ry. Co.*, 82/385. But not such as he may have expended when he offered no testimony to show such expenditures.—*Cousins v. L. S. & M. S. Ry. Co.*, 96/390. See the charge of the court, as to the measure of damages, in *Sherwood v. Railway Co.*, 82/383, approved as fully supported by the rulings in *Geveke v. Railroad Co.*, 57/596, and *Power v. Harlow*, 57/116. Damages for fatal injury should be no more and no less than the widow of decedent and the next of kin have suffered by his loss. If they had no legal claim upon him and received no reliable help from him, his life may have had small, if any, pecuniary value to them. But where the head of the family is taken away, there is a distinct relation between the family circumstances and the family supporter.—*Staal v. G. R. & I. R. Co.*, 57/245. See *Railway Co. v. Bayfield*, 37/205, 214; *Wavle v. M. U. Rys. Co.*, 170/81. In fixing the measure of damages for injury, the jury may award the difference between what the victim would have been able to earn and what he has actually been able to earn since, together with the expense of illness and actual damages for pain, suffering, shock and fright.—*Geveke v. G. R. & I. R. Co.*, 57/589. In an action under this and the next section, for the negligent killing of plaintiff's intestate, the damages recoverable are limited to the pecuniary injury sustained by the persons entitled to share in the distribution of his personal estate.—*Richmond v. C. & W. M. Ry. Co.*, 87/389-90. See *Van Brunt v. Railroad Co.*, 78/530. Where no error is found in the proceedings nor anything improper on the trial tending to prejudice defendant's rights or to inflame the jury and thereby prejudice them against the defendant, the supreme court will not disturb a verdict on the ground solely that it is greater in amount than it appears it should have been.—*Retan v. L. S. & M. S. Ry. Co.*, 94/157, citing *Hunn v. Railroad Co.*, 78/529; *Richmond v. Railway Co.*, 87/392; *Stuyvesant v. Wilcox*, 92/233. Damages for aggravated existing infirmities.—*Phippen v. Railway Co.*, 110/351. See as to damages *Walker v. Railway Co.*, 111/518; *Hedde v. Railway Co.*, 112/547; *Kingston v. Railway Co.*, 112/45; *Lammiman v. Railway Co.*, 112/602; *Beatha v. Railway Co.*, 119/512; *Fluhrer v. Railway Co.*, 121/212; *Shaw v. Railway Co.*, 123/629; *Sax v. Railway Co.*, 129/502; *Ingersoll v. Railway Co.*, 163/268; *Ralph v. Gies-Gear Co.*, 164/44; *Green v. Traction Co.*, 171/18. To justify a recovery for death by wrongful act there must be a showing of some pecuniary injury.—*Rouse v. Electric Railway*, 128/149. Unjust verdict and new verdict.—*Whipple v. M. C. R. Co.*, 130/460. Damages for prospective suffering may be given, but not beyond expectancy of life at the time of trial.—*Howell v. Railway Co.*, 136/432. Postponement of marriage as an element of damages.—*Remey v. United Railway*, 141/116. Measure of damages in case of an infant killed.—*Kalis v. D. U. Ry.*, 155/485. Damages held not excessive.—*Marshall v. Saginaw Valley Traction Co.*, 157/541; *Niblock v. Ann Arbor R. Co.*, 158/582; *Plozke v. D. U. Ry.*, 162/632; *Miller v. M. C. R. Co.*, 167/21; *Wilkins v. D. U. Ry.*, 169/437; *Love v. Detroit, etc., R. Co.*, 170/1; *Krouse v. D. U. Ry.*, 170/438; *Stetson v. Mackinac Transportation Co.*, 182/355. What profits not to be included in damages for death of minor son.—*Moers v. M. U. Rys. Co.*, 158/659. Duty of court to instruct jury as to measure of.—*Jageriskey v. D. U. Ry.*, 163/631. Damages for loss of wife's services can be recovered only in an action instituted by him.—*McCauley v. D. U. Ry.*, 167/297. Excessive damages.—*McDonnell v. Central Drug Co.*, 170/291; *Green v. Traction Co.*, 171/18. Damages in case of married woman separated from husband.—*Winnett v. D. U. Ry.*, 171/629.

COMPANY'S CARE OF EMPLOYES: The employer is charged with the duty of care of those in his service and must not subject them to risks by his own negligence.—*Hathaway v. M. C. R. Co.*, 51/257, citing *M. C. R. Co. v. Smithson*, 45/212; *C. & N. W. Ry. Co. v. Bayfield*, 37/205; *Swoboda v. Ward*, 40/420. When the servant is to be sent into dangerous places or put to dangerous tasks, of the risks of which he is ignorant, due care on the part of the master requires that he shall give the servant notice and put him on his guard.—*Id.*; *Huizega v. Lumber Co.*, 51/276; *Brennan v. M. C. R. Co.*, 93/159; *Palmer v. M. C. R. Co.*, 93/368. But the above rule must not be carried to the extent of making the company insurers of

the safety of its servants, or be used by them as an excuse for their not exercising that care and caution in avoiding dangers which must be expected from all men of ordinary intelligence.—*Hathaway v. M. C. R. Co.*, 51/258. And where any one of fair intelligence and the requisite physical ability is competent to perform a certain class of work, an employer is not bound to inquire into the employe's experience, if he possesses such qualifications, or give instructions in regard to the work.—*Turim v. M. C. R. Co.*, 98/226. A master is bound to furnish a safe place to work and to use all reasonable care in providing safe materials, machinery, tools and appliances for the use of workmen in his employ, and this is a duty which cannot be delegated to another so as to relieve him from personal responsibility.—*Morton v. D., B. C. & A. R. Co.*, 81/431; *Johnson v. Spear*, 76/139; *Adams v. Iron Cliffs Co.*, 78/288; *Van Dusen v. Letellier*, 78/492; *Hunn v. Railroad Co.*, 78/513; *Harrison v. Railroad Co.*, 79/422; *Brown v. Gilchrist*, 80/56, 63; *Hewitt v. F. & P. M. R. Co.*, 67/65; *C. & N. W. Ry. Co. v. Bayfield*, 37/211; *M. C. R. Co. v. Doolan*, 32/513; *Swoboda v. Ward*, 40/420; *Hathaway v. M. C. R. Co.*, 51/253; *Quincy Min. Co., v. Kitts*, 42/34; *Lyttle v. C. & W. M. Ry. Co.*, 84/294; *Preston v. C. & W. M. Ry. Co.*, 98/128; *Shackelton v. M. & N. E. R. Co.*, 107/16; *Balkof v. M. C. R. Co.*, 106/606; *Anderson v. M. C. R. Co.*, 107/591; *Pahlan v. Railway Co.*, 122/232; *Doyle v. Railway Co.*, 127/94; *Hamilton v. M. C. R. Co.*, 135/95; *Henry v. A. A. R. Co.*, 140/446; *Burgess v. Humphrey B. C. Co.*, 156/345; *Kaukola v. Oliver Iron Mining Co.*, 159/689; *Deary v. Hecla Co.*, 161/677; *Gehl v. Pittsburg Coal Co.*, 163/285; *Gerlach v. D. U. Ry.*, 171/475. As to the doctrine of "safe place," see *Petaja v. Aurora I. Min. Co.*, 106/463. The company cannot be heard to excuse itself from taking all reasonable care on the ground that care involves labor or expense.—*Morton v. Railroad Co.*, 81/432. Nor on the ground that the profits of the business carried on will not justify the extra expense of such precautions.—*Beauchamp v. Saginaw Min. Co.*, 50/171. It is a continuing duty, involving inspection from time to time.—*McDonald v. M. C. R. Co.*, 108/7. The duty imposed to furnish safe appliances imposes only reasonable care in selection and inspection, but does not amount to insurance of their safety.—*Siegel v. Railway Co.*, 160/270. It is not an obligation of insurance, but of diligence.—*Fuller v. A. A. R. Co.*, 141/66. But companies cannot be held responsible for hidden defects in tools or appliances, if they have used reasonable care in procuring them, but they are not absolved from the duty of testing or inspecting because they have bought in the open market of reputable dealers, or employed competent workmen to construct them. If any defect exists which a careful test or inspection would have discovered, the master must be held to have knowledge of such defect, and to be responsible for it.—*Morton v. Railroad Co.*, 81/433. The company must have had knowledge of the defect, or it must have existed long enough to raise a presumption of such knowledge.—*Miller v. C. & G. T. Ry. Co.*, 90/230; *Retan v. Railway Co.*, 94/146; *Lyttle v. C. & W. M. Ry. Co.*, 84/289; *La Pierre v. C. & G. T. Ry. Co.*, 99/212; *Ashman v. Railroad Co.*, 90/567. It is as much the duty of the company to see that the cars are so loaded that brakemen will have reasonably safe access to the brakes and an opportunity for the discharge of their duties, as it is to see that proper appliances are provided.—*Irvine v. F. & P. M. R. Co.*, 89/419. But a company is not required to provide the safest known appliances under all circumstances.—*Ft. W., J. & S. R. Co. v. Gildersleeve*, 33/133; *M. C. R. Co. v. Smithson*, 45/212; *Shadford v. Railway Co.*, 111/390. Only ordinary and reasonable precautions are required.—*M. C. R. Co. v. Dolan*, 32/510; *O'Donnell v. D., S. S. & A. Ry. Co.*, 89/174; *Charlebois v. G. & M. R. R. Co.*, 91/59; *Ragon v. T., A. A. & N. M. Ry. Co.*, 97/265. And if appliances in common and general use are furnished, the employer is not liable for negligence on the ground that better and safer ones are obtainable.—*Shadford v. A. A. St. Ry. Co.*, 111/390. A master is not bound to inform an employe of dangers that are open to ordinary observation.—*Findlay v. Wheel & Foundry Co.*, 108/286. And trifling defects are not sufficient to raise a question for the jury.—*Hennig v. Globe Foundry Co.*, 112/616. Where the employe's place of work has been changed.—*Brown v. Railroad Co.*, 118/205. What not deemed a breach of duty to furnish a safe place.—*Wickham v. D. U. Ry.*, 160/277. The obligation to provide a safe place does not include dangers arising by reason of conditions which change with the progress of the work.—*Dunn v. Great Lakes Dredge & Dock Co.*, 161/551; *Strepanski v. Grand Rapids Plaster Co.*, 162/696. Nor does it apply while construction work is in progress.—163/523.

LIABILITY TOWARD EMPLOYEES: The responsibility of a railroad company is less strict, as to the condition of its road, in the case of an employe who is supposed to be aware of such conditions, than in the case of a stranger.—*Batterson v. C. & G. T. Ry. Co.*, 53/125. Employes may be chargeable with knowledge that side tracks are not always perfect, that they are sometimes constructed over ditches or gullies, and are not always ballasted with the same care as main tracks; but railroad companies owe it to their employes to protect them from unnecessary and dangerous pitfalls and unusual conditions.—*Ragon v. T. A. A. & N. M. R. Co.*, 91/379. See, also, *Fuller v. Railway Co.*, 108/690. The company is liable if the employe is injured on account of being assigned to work not in his line.—*Jones v. L. S. & M. S. Ry. Co.*, 49/573; *C. & N. W. Ry. Co. v. Bayfield*, 37/204; *Swoboda v. Ward*, 40/420; *Quincy Min. Co. v. Kitts*, 42/34; *M. C. R. Co. v. Smithson*, 45/212. As to the employment of fellow servants,

it is the rule that the master does not insure the competency of his servants, but he contracts to use all ordinary care in their selection and retention.—*Lewis v. Emery*, 108/641, citing *Hilts v. Railway Co.*, 55/437; *Davis v. Railroad Co.*, 20/105.

WHEN NOT RESPONSIBLE TO EMPLOYEES: When a company is not responsible to an employe for injuries resulting from the condition of the road or other property.—*Henry v. L. S. & M. S. Ry. Co.*, 49/495. Or for the manner of conducting its operations.—*Peterson v. C. & N. W. Ry. Co.*, 67/102. Or for the kind and character of machinery or appliances used.—*Illick v. F. & P. M. R. R. Co.*, 67/632; *M. C. R. R. Co. v. Smithson*, 45/212; *M. & O. R. R. Co. v. Taft*, 28/289. A company is not responsible for not clearing snow and ice from the ground alongside of its track.—*Piquegno v. C. & G. T. Ry. Co.*, 52/40.

RISKS OF EMPLOYMENT ASSUMED: When a person enters the service of a railroad company he assumes the risks and dangers incident thereto and cannot demand compensation from his employer for accidental injury.—*Davis v. D. & M. R. Co.*, 20/105; *Ft. W. J. & S. R. Co. v. Gildersleeve*, 33/133; *Botsford v. M. C. R. Co.*, 33/256; *M. C. R. Co. v. Austin*, 40/247; *Swoboda v. Ward*, 40/423; *Quincy Min. Co. v. Kitts*, 42/40; *Day v. T., C. S. & D. Ry. Co.*, 42/523; *M. C. R. Co. v. Smithson*, 45/212; *Smith v. F. & P. M. Ry. Co.*, 46/258; *Foley v. C. & N. W. Ry. Co.*, 48/622; *Hathaway v. M. C. R. Co.*, 51/257; *McGinnis v. C. S. Bridge Co.*, 49/466; *Batterson v. C. & G. T. Ry. Co.*, 49/184; 53/125; *Piquegno v. C. & G. T. Ry. Co.*, 52/44; *Viets v. T., A. A. & G. T. Ry. Co.*, 55/120; *Railway Co. v. Dolan*, 32/510; *Huizega v. Lumber Co.*, 51/272; *Railroad Co. v. Gilbert*, 46/176; *Smith v. Potter*, 46/258; *Railroad Co. v. Taft*, 28/289; *James v. Mining Co.*, 55/335; *Hoar v. Merritt*, 62/386; *Hewitt v. F. & P. M. R. Co.*, 67/65; *Henry v. Railway Co.*, 49/498; *Brewer v. Railway Co.*, 56/620; *Gardner v. Railroad Co.*, 58/584; *Illick v. F. & P. M. R. Co.*, 67/638; *Hammond v. C. & G. T. Ry. Co.*, 83/334; *Jacobs v. L. S. & M. S. Ry. Co.*, 84/299; *Pennington v. D. G. H. & M. Ry. Co.*, 90/505; *Brennan v. M. C. R. Co.*, 93/156; *Jolly v. D. L. & N. R. Co.*, 93/370; *Dysinger v. C., S. & M. Ry. Co.*, 93/646; *Ragon v. T. A. A. & N. M. Ry. Co.*, 97/265; *Breig v. C. & W. M. Ry. Co.*, 98/222; *La Pierre v. C. & G. T. Ry. Co.*, 99/212; *Roepcke v. M. C. R. Co.*, 100/541; *Manning v. C. & W. M. Ry. Co.*, 105/260; *Shackelton v. Railroad Co.*, 107/16; *Niles v. Railway Co.*, 107/238; *Richards v. Mich. Pressed Steel Co.*, 155/668; *MacDonald v. Freeman Mfg. Co.*, 160/380; *Dunn v. Great Lakes Dredge & Dock Co.*, 161/551; *Lukovski v. M. C. R. Co.*, 164/361; *Neifert v. Metler*, 165/354; *Yost v. G. T. R. Co.*, 166/672; *Mellish v. P. M. R. Co.*, 167/87; *McCauley v. M. C. R. Co.*, 167/230; *Cousineau v. Embury*, 171/23. The principle rests on the ground of an implied contract that the servant will assume the risk of all dangers incident to his employment. But as to strangers to the contract whose negligence causes injury to the servant, no such defense exists.—*Teachout v. D., G. H. & Muskegon*, 179/388. But this doctrine does not give unlimited immunity to the master. It is shaded down to cases where the want of knowledge precludes the inference and makes the master liable. And this later doctrine does not justify carelessness upon the part of the servant. The master has a right to expect the servant to be on the alert.—*Ragon v. Railway Co.*, 97/274. And the servant assumes only such risks as are properly incident to his employment.—*C. & N. W. Ry. Co. v. Bayfield*, 37/205; *Quincy Mining Co. v. Kitts*, 42/34; *Irvine v. Railroad Co.*, 89/416; *Cregg v. Railway Co.*, 91/624; *Roux v. Blodgett Lumb. Co.*, 85/519; *Snow v. Escanaba Power Co.*, 162/579; *Lobenstein v. Whitehead & Kales Iron Co.*, 179/279. Unless the risk was incident to plaintiff's employment or he knew of the existence of the danger encountered, he could not be held to have assumed it.—*Murphy v. Gt. Lakes Dredge & Dock Co.*, 175/216. The servant does not assume the risk of the master's negligence.—*Quincy Mining Co. v. Kitts*, 42/34; *Van Dusen v. Letellier*, 78/504; *Roux v. Blodgett Lumb. Co.*, 85/519; *Irvine v. Railroad Co.*, 89/416. There is a clear distinction between cases where risks are voluntarily assumed and those where the servant acts under orders or defers to the superior judgment of the master.—*Dysinger v. Railway Co.*, 93/649. Where the rule as to assuming risks does not apply.—*Lytle v. Railway Co.*, 84/289. Further, as to assumption or risk, consult *Burke v. Parker, Webb & Co.*, 107/88; *Niles v. M. St. P. & S. S. Ry. Co.*, 107/238; *Secord v. C. & M. L. S. R. Co.*, Id. 540; *Welch v. Brainard*, 108/38; *Fenlon v. Railway Co.*, 108/284; *Fuller v. L. S. & M. S. Ry. Co.*, 108/690; *Huffman v. M. C. R. Co.*, 109/251; *Gavigan v. L. S. & M. S. Ry. Co.*, 110/71; *Kastl v. Wabash R. Co.*, 114/53; *Thomas v. A. A. R. Co.*, Id. 59; *Soderstrom v. Holland-Emery Lumber Co.*, Id. 83; *Hayball v. D., G. H. & M. Ry. Co.*, Id. 135; *Andrews v. Tamarack Mining Co.*, 114/375; *Whalen v. M. C. R. Co.*, 114/512; *Peppett v. M. C. R. Co.*, 119/640; *Fluhrer v. Railway Co.*, 121/212; *Shadford v. Railway Co.*, 121/224; *Phelps v. Railway Co.*, 122/171; *Potter v. Railway Co.*, 122/179; *Doyle v. Railway Co.*, 127/94; *Crawford v. Railroad Co.*, 127/312; *McWethy v. Railroad Co.*, 127/333; *Dolson v. Railway Co.*, 128/444; *Noe v. Rapid Railway Co.*, 133/152; *Seecombe v. Electric Railway*, 133/170; *Miller v. Railway Co.*, 133/564; *Bradburn v. Wabash Railroad Co.*, 134/575; *Burton v. Brunswick-Balke-Collender Co.*, 166/45; *Oiva v. Calumet & Hecla Mining Co.*, 178/645; *Mero v. M. C. R. Co.*, 180/1; *Hilgbrandt v. Oval Wood Dish Co.*, 180/43. A railroad engineer does not assume the risk from spreading rails due to rotten ties or failure properly to spike the rails.—*Hamil-*

ton v. M. C. R. Co., 135/95. Employes do not assume the risk of injury through the negligence of an incompetent engineer of a mining company.—Layzell v. J. H. Somers Coal Co., 156/268; Capeling v. Saginaw Coal Co., 156/437. When risk of injury from fall of frozen crust of pile of sand being shoveled not assumed.—Brown v. Lennane, 155/686. Where a duty is imposed by statute for the protection of the employe, an injury from the neglect of such duty is not an assumed risk.—Kleinfelt v. J. H. Somers Coal Co., 156/473; Van Doorn v. Heap, 160/199. Doctrine of assumed risk not binding upon a child employed in violation of law.—Dalm v. Bryant Paper Co., 157/550. See, also, Sabin v. Northwestern Leather Co., 157/579; Betterly v. Railroad Co., 158/385. Risk of a loose and insufficient guard on a mangle, without any warning, not assumed.—Garnsley v. Boyce, 158/8. The basis of the principle of assumed risk is an implied contract by the employe to assume the risk of all dangers obviously incident to the employment.—Brousseau v. Kellogg Switchboard & Supply Co., 158/312. Effect of promise to repair to relieve the employe of obvious risks.—Id. The increase of danger in riding upon an engine is an obvious risk assumed by the servant.—Moyer v. Ann Arbor R. Co., 159/645. The servant is not bound to familiarize himself with all the machinery and appliances which he does not use himself.—Kaukola v. Oliver Iron Mining Co., 159/689.

See further as to non-assumption of risk.—Adams v. Grand Rapids Refrigerator Co., 160/591; Deary v. Hecla Co., 161/677; Goda v. Maurer, 162/621; Dascho v. Mich. Alkali Co., 163/612; Orso v. Great Lakes Engineering Works, 164/568; Rivers v. Traction Co., 164/696; Danula v. Quincy Mining Co., 166/350; Molyneux v. Bradley, Miller & Co., 167/278; Baker v. M. C. R. Co., 169/609; Wallin v. Railway Co., 172/466.

WHO ARE FELLOW SERVANTS: Although one servant may be in a position of greater responsibility than the other, or in a different line of employment, if they are both in the same general business, so that the negligence of the one might contribute to the danger of the other, they are fellow servants, and one assumes the risk of the other's negligence.—Quincy Mining Co., v. Kitts, 42/34. All who serve the same master, work under the same control, derive authority and compensation from the same common source and are engaged in the same general business, though it may be in different grades or departments of it, are fellow servants.—Adams v. Iron Cliffs Co., 78/288. But see that general rule qualified and the question of who are fellow servants discussed in Hunn v. Railroad Co., 78/518. See, also, Morch v. T. S. & M. Ry. Co., 113/154. And the tendency of modern adjudications is more and more to relax the rule that those who are engaged in the same common enterprise or business are fellow servants, especially if it can be pointed out that the one in fault occupies some higher grade or more power than the party injured. The question of who are fellow servants is not to be determined solely from the grade or rank of the offending or injured servant, but it is to be determined by the character of the act being performed by the offending servant.—Harrison v. Railroad Co., 79/424-5; Palmer v. Railroad Co., 93/367. Conductors and brakemen have been held fellow servants.—Smith v. F. & P. M. Ry. Co., 46/258; La Pierre v. Railway Co., 99/212. It is the established rule that employes of freight trains are fellow servants.—Stanley v. Railway Co., 101/208. So are a brakeman on a freight train and a car inspector, whose duty it is to inspect cars from other companies for transportation and see that they are properly loaded and in good condition.—Dewey v. Railway Co., 97/329. So are section men and their foreman.—Timm v. Railroad Co., 98/226; Gavigan v. L. S. & M. S. Ry. Co., 110/71; Morch v. Railway Co., 113/154. And a fireman and the conductor of another train.—Jarman v. Railway Co., 98/135. And conductor and engineer.—Enright v. Railway Co., 93/409. And a founder in a blast furnace and the engineer of a train belonging to the same company.—Adams v. Iron Cliffs Co., 78/271. The foreman of a room in a carshop and the men under his charge, with whom he works.—Findlay v. Russell W. & F. Co., 108/286. A shift boss of miners and a trammer.—Petaja v. Aurora I. Min. Co., 106/463. Train crew and station agent who inspects freight cars to see that they are properly loaded.—Miller v. M. C. R. Co., 123/374; Lellis v. M. C. R. Co., 124/37. Freight conductor and station agent.—Henry v. A. A. R. Co., 140/446. Crossing tender and switchman.—Dixon v. G. T. W. Ry. Co., 155/169. Superintendent as fellow servant.—Maxwell v. Elk Cement & Lime Co., 157/631. Further decisions as to who are fellow servants.—Stever v. Ann Arbor R. Co., 160/207; Gerstler v. Weinberg, 160/267; Belmer v. Boyne City Tanning Co., 160/669; Howcroft v. D. U. Ry., 163/608; Rogers v. P. M. R. Co., 166/42; Lepard v. M. C. R. Co., 166/373; Mellish v. P. M. R. Co., 167/86; McCauley v. M. C. R. Co., 167/230; Garlinghouse v. M. C. R. Co., 174/73.

NOT FELLOW SERVANTS: As to "vice-principals," see Van Dusen v. Letellier, 78/502; Morch v. T. S. & M. Ry. Co., 113/154. And the employer's alter ego.—Hunn v. Railroad Co., 78/519. If the act being done by the offending servant is one that the law imposes the duty of doing upon the master, then the offending employe is not a fellow servant, but a superior agent for whose acts the master is liable. And if the master has delegated to a servant or employe the care and management of the entire business, or a distinct department of it, and the superior servant is charged with the performance of duties towards the inferior servant which the law imposes upon the master, then such superior servant stands in the place of the master and the rule of respondent superior applies. Whether or not the servant has power to employ and discharge other servants is also im-

portant in determining whether or not he is deemed to be a superior servant, for whose acts the master is liable.—*Harrison v. Railroad Co.*, 79/425; *Palmer v. Railroad Co.*, 93/367. A train dispatcher who has absolute control over a division of a railroad, so far as the running and operating of trains is concerned, is not a fellow servant with other employes acting under his orders.—*Hunn v. M. C. R. Co.*, 78/513. Nor are an assistant roadmaster and sectionmen fellow servants.—*Harrison v. Railroad Co.*, 79/409. Nor a foreman intrusted with the general supervision of a coal and freight business and the men engaged in unloading vessels loaded with coal. *Brown v. Gilchrist*, 80/56. Nor yardmaster and switchman.—*Lytle v. Railway Co.*, 84/289. Nor foreman and laborer on a gravel train.—*Erickson v. M., L. S. & W. Ry. Co.*, 93/414. Nor a switchman, employed by a board representing three corporations and not under control of any one of them and a car inspector employed by only one of such corporations.—*Kastl v. Wabash R. Co.*, 114/53. When the foreman of a gang of men represents his employer.—*Thomas v. Railroad Co.*, 114/59. Car inspector whose duty it is to supply safe machinery, not fellow servant of freight conductor, whose duty it is to operate machinery.—*McDonald v. M. C. R. Co.*, 132/372. Inspector of railroad bed and railroad engineer not fellow servants.—*Hamilton v. M. C. R. Co.*, 135/95. When doctrines of fellow-servant and assumed risk do not apply.—*Capeling v. Coal Co.*, *Capeling v. Saginaw Coal Co.*, 156/437 (citing *Layzell v. J. H. Somers Coal Co.*, 156/268). See *Kleinfelt v. J. H. Somers Coal Co.*, 156/473. Not fellow servants.—*Avikainen v. Baltic Mining Co.*, 160/375; *Belmer v. Boyne City Tanning Co.*, 160/669; *Jackson v. Det. & Mac. Ry. Co.*, 161/163; *Haxer v. Griessel*, 162/310; *Argersinger v. Commonwealth Power Co.*, 164/282; *Peters v. M. C. R. Co.*, 165/217. Servants of separate masters, although engaged in a common undertaking, are not fellow servants.—*Johnson v. E. C. Clark Motor Co.*, 173/277.

COMPANY NOT LIABLE IN CASE OF FELLOW SERVANT'S NEGLIGENCE: In this state in 1862, in the case of *M. C. R. Co. v. Leahey*, 10/199, the general doctrine was laid down that the master is not liable to a servant for the neglect of his fellow servant in doing or omitting to do his portion of the common work.—*Harrison v. Railroad Co.*, 79/421. Establishment of the rule in England and in the American states.—*Id.* 421-2. See, also, *Davis v. D. & M. R. Co.*, 20/105; *M. & O. R. Co. v. Taft*, 28/289; *M. C. R. Co. v. Dolan*, 32/510; *M. C. R. Co. v. Austin*, 40/247; *Day v. Railway Co.*, 42/523; *M. C. R. Co. v. Gilbert*, 46/176; *Smith v. Potter*, 46/258; *Greenwald v. M. H. & O. R. Co.*, 49/197; *Henry v. L. S. & M. S. R. Co.*, 49/495; *Hilts v. Railway Co.*, 55/437; *Gardner v. M. C. R. Co.*, 58/584; *Catlin v. M. C. R. Co.*, 66/358; *Hewitt v. F. & P. M. R. Co.*, 67/66; *Quincy Min. Co. v. Kitts*, 42/34; *M. C. R. Co. v. Smithson*, 45/212; *Ryan v. Bagaley*, 50/79; *Hunn v. Railroad Co.*, 78/517-8; *Town v. M. C. R. Co.*, 84/214; *Conger v. F. & P. M. R. Co.*, 86/76; *Hennig v. Globe Foundry Co.*, 112/616; *Whalen v. M. C. R. Co.*, 114/512; *Miller v. M. C. R. Co.*, 123/374; *Lellis v. M. C. R. Co.*, 124/37; *Richards v. Mich. Pressed Steel Co.*, 155/668; *Barto v. Detroit Iron & Steel Co.*, 164/135; *McCauley v. M. C. R. Co.*, 167/230. The rule is not confined to cases of actual employment. Any one who undertakes to perform the duties places himself for the time being in the same condition as if actually employed.—*M. C. R. Co. v. Leahey*, 10/100. But the master will be liable for an injury caused by the incompetency of the fellow servant, if he has been employed without due care or retained after knowledge of such incompetency, either actual or presumptive.—*Hilts v. Railway Co.*, 55/442; *Peterson v. C. & N. W. Ry. Co.*, 67/102. Even if the incompetency is caused by the use of liquor.—*Hilts v. Railway Co.*, 55/437; *M. C. R. Co. v. Gilbert*, 46/176. Where two fellow servants have duties to perform, wholly distinct from each other, and are severally engaged in such duties, the negligence of one should not be imputed to the other.—*McKernan v. Street Railway*, 138/519.

EMPLOYEE'S NEGLIGENCE EXCUSES COMPANY: See note "Contributory negligence" for the doctrine involved. Compare *Brewer v. F. & P. M. Ry. Co.*, 56/620; *Gardner v. M. C. R. Co.*, 58/584; *Goulin v. C. S. Bridge Co.*, 64/190; *Coops v. L. S. & M. S. Ry. Co.*, 66/448; *Illick v. F. & P. M. Railway Co.*, 67/632; *Kelly v. D. S. S. & A. Ry. Co.*, 92/19; *Jolly v. D., L. & N. R. Co.*, 93/370; *Pennington v. D., G. H. & M. Ry. Co.*, 90/505; *Wilson v. M. C. R. Co.*, 94/20; *Schaible v. L. S. & M. S. Ry. Co.*, 97/318; *Farner v. M. C. R. Co.*, 99/131. If the injury results from the employee's disregard of rules he cannot recover.—*Lyon v. D., L. & L. M. R. Co.*, 31/429; see *C. & N. W. Ry. Co. v. Bayfield*, 37/204.

(228) § 6309. SEC. 8. Every such action shall be brought by and in the names of the personal representatives of such deceased person, and the amount recovered in any such action shall be distributed to the persons, and in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate; and in every such action the jury may give such amount of damages as they shall deem fair and just, to the persons who may be

Action for same, how brought.

Proviso,
proceedings
not affected
hereby.

entitled to such damages when recovered: Provided, Nothing herein contained shall affect any suit or proceedings heretofore commenced and now pending in any of the courts of this state.

The administrator must show that some person has suffered some pecuniary injury by the death.—Hurst v. Detroit City Ry., 84/547-8; Van Brunt v. Railroad Co., 78/530. Under this statute the jury is not warranted in giving damages not founded upon the testimony, or beyond the measure of compensation for the injury inflicted.—Balch v. G. R. & I. R. Co., 67/397; Cooper v. Railway Co., 66/271. See notes to preceding section.

A surviving sister, whose father and mother were living, not entitled to share in the estate, was not entitled to consideration in estimating damages for the killing.—Richardson v. D. & M. Ry. Co., 176/413. But the right to recover damages was not defeated by the fact that decedent voluntarily contributed to the support of her infirm and aged parents, notwithstanding no steps had been taken to compel contribution under C. L. § 4487 et seq.—Id.

Penalty for
issuing
fraudulent
stock, etc.

(229) § 6310. SEC. 9. If any president, secretary, or other officer of any railroad corporation within this state shall willfully, and with intent to defraud said corporation, or any other person, make, sign, issue, sell, or offer to sell, any false or fraudulent stock, or other evidence of debt of said corporation, he shall be deemed guilty of felony, and shall be punished by imprisonment in the state prison, at hard labor, for a term not exceeding ten years.

Suits for
penalties.

(230) § 6311. SEC. 10. All penalties incurred under this act, when not otherwise provided for, may be sued for in the name of the people of the state of Michigan, and if such penalty be for a sum not exceeding one hundred dollars, then such suit may be brought before a justice of the peace.

Act may be
altered,
amended or
repealed.

(231) § 6312. SEC. 11. This act may at any time be altered, amended, or repealed, but such alteration, amendment or repeal shall not affect the rights of property of companies organized under it; nor shall the dissolution of any such company take away or impair any remedy given for or against such corporation, its stockholders or officers, for any liability which shall have been previously incurred; and the provisions of this act shall apply to all companies incorporated or existing under the laws of this state, except the Paw Paw Railroad Company, which shall in no manner be affected by the passage of this act, in respect to the franchises and privileges heretofore granted to said company.

Paw Paw
railroad ex-
cepted from
operations
hereof.

Wellman v. Railway Co., 83/597. Sections 12 and 13 are repealing sections. For section 22 added to this chapter by mistake, see section 219 ante.

Sections 24 and 25 added here but evidently intended to be added to the act creating the office of railroad commissioner are omitted from this compilation, being deemed superseded by the act creating the railroad commission.

"Ordinary
baggage,"
etc., what
deemed.

(232) § 6316. SEC. 26. The words "ordinary baggage" and "baggage" wherever used in this act and in the acts amendatory thereto, shall be deemed to include bicycles, baby carriages and go-carts, and no passenger shall be required to crate, cover or otherwise protect any such baggage: Provided, Each passenger shall be entitled to have but one bicycle, baby carriage or go-cart transported under the provisions of this act.

Proviso.

(233) § 6317. SEC. 27. All railroad companies shall Equipment. equip their baggage cars with hooks, racks or other appliances for the safe and convenient storage and transportation of bicycles, baby carriages and go-carts. Such hooks, racks or other appliances shall be of such construction as not to scratch, mar or injure the bicycle, baby carriage or go-cart in any way. Any railroad company whose baggage cars are Liability. equipped as above provided shall not be liable for any damage to any bicycle, baby carriage or go-cart while being stored or transported, unless such damage results from carelessness or negligence of its employes.

Am. Id.

SECTION II.—UNION STATION AND DEPOT COMPANIES.

An Act to authorize the incorporation of companies for the construction of union railroad stations and depots, with the necessary connecting tracks, and the management of the same.

[Act 244, P. A. 1881.]

The People of the State of Michigan enact:

(234) § 6356. SECTION 1. That any number of persons, Who may incorporate. not less than seven, may, as hereinafter provided, organize themselves into a corporation for the purpose of acquiring the necessary station grounds and constructing and maintaining railway freight and passenger depots in cities and villages, with the necessary railroad tracks and other accommodations to make suitable and proper connections with all railroads terminating in or passing through such cities or villages that may desire access to such depots; and also all necessary buildings for the convenience and accommodation of all business usually pertaining to such depots.

The rights of a railroad company under its lease of terminal facilities from a union station company cannot be measured or affected by a subsequent lease by the station company to another railroad company.—P. M. R. Co. v. Wabash R. Co., 141/215.

Detroit, etc., Station Co. v. Depot Co., 128/184.

This act is not unconstitutional in conferring the power of eminent domain upon the corporations organized under it and the title is sufficient to warrant the conferring of such power.—Ft. St. Union Dep. Co., v. Morton, 83/265; Ft. St. U. Dep. Co. v. Peninsular Stove Co., 103/637. And there is no force in the objection that the act does not contemplate more than one union depot in each city or village.—Id.

(235) § 6357. SEC. 2. The persons designing to organize Articles of association, what to set forth, etc. such corporation may do so by subscribing articles of association in which shall be set forth: The name of the corporation; the number of years the same is to be continued; the amount of capital stock of the corporation, which shall not be less than the estimated and probable cost of the proposed station grounds, depot buildings, and railroad tracks proposed to be laid, the number of shares of which the stock

shall consist, which shall be the amount of one hundred dollars each; the number of directors, which shall not be less than five nor more than fifteen; a description of the place where such depots will be located, and the points or place to which it is proposed to construct tracks over which to afford access thereto. Each subscriber to such articles of association shall set opposite his name, his place of residence, and the number of shares of stock by him subscribed. Whenever fifty per cent of the capital stock of such corporation shall have been subscribed upon such articles of association, and ten per cent shall have been in good faith in cash paid in to the directors named in such articles, and an affidavit shall have been made and attached thereto by any two of said directors, that said amount has been subscribed and ten per cent paid in as aforesaid, such articles of association shall be filed in the office of the secretary of state; and thereupon the persons who have subscribed the same, and all other persons who shall from time to time thereafter subscribe thereto, or become the holders of capital stock of said corporation, in the manner to be provided in its by-laws, shall be a body corporate by the name specified in such articles, and shall be capable of suing and being sued, may have a common seal, may make and alter the same at pleasure, and shall be capable in law of purchasing, holding, and conveying any real estate and personal property whatever, necessary for the location, construction, maintenance, and operation of such depots and tracks, and for the erection and maintenance of all buildings and the necessary appurtenances for the successful use of the same.

Where filed,
etc.

Board of
directors.

(236) § 6358. SEC. 3. Such articles of association having been filed with the secretary of state, as in the last preceding section provided, the subscribers thereto shall elect the first board of directors, who shall hold their office for the term of one year, or until their successors are elected as shall be provided by the by-laws of the company; and all the corporate powers of any such corporation shall be and are hereby vested in the board of directors, except as shall be in this act otherwise provided.

General pow-
ers, etc.

(237) § 6359. SEC. 4. Every such corporation shall possess the general powers and be subject to the liabilities and restrictions following, that is to say:

First, To cause such examinations and surveys for the proposed site of its depots, and for the most advantageous route or routes for its proposed tracks to be made as may be necessary, and for such purpose, by its officers, agents, and servants, to enter upon lands or waters of any person or company, subject only to liability for all damages which they shall do thereto;

Second, To take and hold such real estate and other property as may be necessary for the purposes of its organization, provided that no real estate or other property shall

be taken or appropriated by such company, until the compensation to be made therefor has been agreed upon by the parties and paid to the owners, or ascertained and deposited as hereinafter prescribed, unless the consent of such owner be given therefor;

Third, To lay out and construct its tracks upon or across any stream of water, water-course, private road, street, lane, alley, or highway, and across any plank road, railroad, or canal, which may be necessary for the purpose of making the connections herein provided for; but the corporation shall restore the stream, water-course, private road, street, lane, alley, highway, plank road, railroad, or canal to its former state, as near as may be, and shall not materially obstruct the navigation of any stream, nor obstruct any public highway or street by cars or trains for more than five minutes at any one time, and shall construct suitable road and street crossings for the passage of teams by putting down planks between and on each side of the rails, the top of which shall be at least as high as the top of the rails. And in case of the construction of such tracks on any public street, lane, alley, or highway, the same shall be on such terms and conditions as shall be agreed upon between the company and the common council of any city, or the village board of any village, or the commissioner of highways in any township in which the same may be; provided that such tracks shall not be constructed on any public street, lane, alley, highway, or private way, until compensation be made by the company therefor to the owner or owners of property adjoining such street, lane, alley, highway or private way, and opposite where such tracks is to be constructed, either by agreement between the company and each owner, or ascertained and paid as hereinafter prescribed for obtaining property or franchises for the purpose of its incorporation;

Fourth, To join and unite its tracks with those of any railroad company desiring to use such depot with the necessary turn-outs, sidings, switches, and conveniences in furtherance of such use of said depot, and to make all necessary business arrangements with any such company for the use of said depot, and also to make any agreement with any other railroad company in reference to any crossing of tracks or station grounds;

Fifth, To erect and maintain all necessary and convenient buildings, stations, depots, and fixtures for the accommodation and use of passengers, and of freight and other business within the purpose of its organization.

THIRD: Railroad companies and these depot companies have no absolute right to construct their roads upon or across the public streets. That right is derived solely from the people through the legislature, and that right must be exercised in such a manner and under such restrictions as the legislature, acting with constitutional authority, has seen fit to impose upon them.—*Union Depot Co. v. St. R. R. Crossing Board*, 81/258-9; *Backus v. Gartner*, 89/211. Damage to property in the vicinity, when a union depot company occupies a street.—*Buhl v. U. Dep. Co.*, 98/596.

FIFTH: *Det. U. Dep. Co. v. Detroit*, 88/348; *Ft. St. Dep. Co. v. Backus*, 92/33.

How property
of minors,
etc., obtained.

(238) § 6360. SEC. 5. In case any real estate required by said company for the purposes of its incorporation is owned by a person insane, a minor, or otherwise incompetent and under guardianship, and such company and the guardian of such person shall agree upon a price for the same, and enter into a contract in writing therefor, the said guardian may, upon the approval of the same by the probate court of the county in which the said real estate is situated, convey said real estate in accordance with the terms of such contract to said railroad company, and the deed thereof shall be valid in law to convey the title of such person under guardianship to said company in accordance with the terms of said contract.

Right to
acquire real
estate.

(239) § 6361. SEC. 6. In case any such company is unable to agree for the purchase of any real estate, property or franchises required for the purpose of its incorporation, it shall have the right to acquire the title to the same in the manner and by the special proceeding prescribed in this act; but there shall be no power, except for crossing, to take the track or rights of way of any other railroad company without the consent of said railroad company.

The negotiations for the purchase of property required by the statute before instituting condemnation proceedings contemplate knowledge on the part of the land owner of the purpose for which the land is wanted.—Ft. St. U. Dep. Co. v. Jones, 83 / 415; U. Dep. Co. v. Backus, 92 / 50; U. Dep. Co. v. Pen. Stove Co., 103 / 637.

How acquired.

(240) § 6362. SEC. 7. For the purpose of acquiring such title, such company may present a petition to any court of record for such county, praying for the appointment of three commissioners. Said petition shall be in the name of the company, and shall be signed by one of the directors, or the engineer, or the attorney of said company, on its behalf, and shall be verified by the oath of the person so signing the same, and shall contain the description of all the real estate, property or franchises, or so much thereof as the company seeks to acquire under such petition in said county; and that said company is duly incorporated; that the capital stock of the company has been, in good faith, subscribed, as required by this act, to organize such company; that the company has surveyed its depot grounds and the route of its proposed tracks in said county, and made a map and survey thereof, by which said depot ground and route is designated; and that it has located the same according to such survey, and filed a certificate thereof, signed by a majority of the directors of said company, in the register's office of said county; that the property described in the petition is required for the purposes of its incorporation, and that the taking thereof is necessary for public use, and that the company has not been able to acquire title thereto, and the reason of such inability. The petition must also state the names and places of residence of the parties so far as the same can with reasonable diligence be ascertained, who own, or have, or claim to own,

or have estates or interests in said lands or property; and if any such persons are infants, their ages, as near as may be, must be stated, and if any of them are idiots, or persons of unsound mind, or are unknown, it must be so stated, together with such other facts and allegations as to incumbrances or otherwise, as will be sufficient to show who have or claim to have interests in said lands, real estate or property, and such other matters as the company may see fit to make. A copy of such petition, with a notice of the time and place, when and where the same will be presented to such court, must be served on all persons whose interests will be affected by the proceeding, at least ten days prior to the presentation of the same to the court, as follows, viz.:

First, If the person on whom service is to be made resides in this state, and is not an infant, under the age of fourteen years, idiot, or person of unsound mind, service of a copy of said petition and notice must be made on him, or his agent, or attorney authorized to contract for the sale of real estate described in the petition, personally, or by leaving the same at the usual place of residence of such person or agent, with some person of suitable age; and if he resides out of this state, but has such agent as aforesaid residing in this state, then such service may be made on such agent in the manner aforesaid, or upon him personally out of or within this state; or it may be by publishing a notice stating briefly the object of the application, and giving a description of the land, interest therein, or property to be taken, and in some paper published in the county in which said lands or property are situated, if there be one, and if not, then in some weekly paper published in the city of Detroit, once in each week for six weeks next previous to the presentation of the petition; and if the residence of such person or persons residing out of this state be known, a copy of such petition and notice shall be deposited in the postoffice at least thirty days previous to presenting such petition, directed to such person at his place of residence, as near as may be, postage prepaid; Service of
petition.

Second, If any person on whom such service is to be made is a minor under the age of fourteen years, or an idiot, or person of unsound mind, and resides in this state, such service shall be made as aforesaid, on his guardian; or if none, then on the person who has the care of, or with whom such infant, idiot, or person of unsound mind resides;

Third, If the person on whom such service is to be made be unknown, or his residence unknown, then such service may be made by publication for six weeks in the same manner provided in the first subdivision of this section, and the court or judge shall appoint an attorney to appear for and protect the rights of any such person;

Fourth, In case any party to be affected by the proceeding is an infant, idiot, or person of unsound mind, and has no guardian, the said court, or the judge of said court, shall

appoint a special guardian or committee to appear for and attend to the interests of such infant, idiot, or person of unsound mind, and all notices to be served in the progress of the proceeding may be served on such special guardian;

Fifth, In all cases not otherwise provided for, service of orders, notices and other papers in the proceedings authorized by this act, may be made as the said court or judge may direct.

The question of the sufficiency of the map is a jurisdictional one, to be determined by the court.—T., S. & M. R. Co. v. Campau, 83 / 33.

Hearing before judge.

Appointment of commissioners.

Proviso as to jury.

(241) § 6363. SEC. 8. On presenting such petition to said court or the judge thereof at chambers, with proof of service of a copy thereof, and due notice as aforesaid, all persons whose estate or interest are to be affected by the proceedings may show cause against the prayer of the petition, and may disprove any of the facts alleged therein; and said court or judge shall hear the proofs and allegations of the parties; and if no sufficient cause is shown against granting the prayer of the petition, said court or judge shall make an order appointing three disinterested and competent freeholders as commissioners to ascertain and determine the necessity for taking such lands, franchises, or other property, and to appraise and determine damages or compensation to be allowed to the owners and persons interested in the real estate or property proposed to be taken in such county for the purposes of the company; and such court, or the judge thereof, shall fix the time and place for the first meeting of such commissioners: Provided, That any person or persons, or company, whose estate or interest is to be affected by the proceedings, may demand and have from such court, at the time of hearing of said petition, a jury of twelve freeholders of said county to ascertain and determine the necessity for taking such lands, franchises, or other property, and to appraise and determine the damages or compensation to be allowed therefor. Thereupon the court shall direct the sheriff or any constable of the county to make a list, in writing, of twenty-four inhabitants of the county, qualified to serve as jurors in the courts of record in this state. Such sheriff or officer shall, before he proceeds to make such list, be sworn by the court or judge to select such persons according to his best judgment, and without favor or partiality to either party. From such list the person or persons demanding such jury may alternately strike off six names, and the petitioning company six names, and in case of either of them refusing or neglecting to do so, the judge shall strike off from said list for the party so refusing or neglecting, so as to leave only twelve names thereon. Such court, or the judge thereof, shall issue a venire in the usual form, inserting therein the twelve names so remaining on said list, and requiring such jury to meet at the time and place appointed therefor by the court, which said venire may be served by the sheriff, any constable,

or other proper officer of the county, as in other cases; and if at the time and place appointed by said court or judge for said jury to meet, any of the persons named as jurors do not attend, or if any named in the venire, or chosen as talesmen, shall be rejected in a challenge for cause (which right of challenge is hereby granted), it shall be competent for said court, or the judge thereof, to order the said sheriff or other officer to summon immediately as many competent persons as may be necessary, with the persons in attendance as jurors, to furnish a panel of twelve jurors; and if no jury be demanded on the part of any person mentioned in said petition, his or her right to the same shall be deemed to have been waived. In case any parcel of land is owned or occupied by parties having different interests or estates therein, or in any part thereof, they may be united as respondents in respect to the same in the petition, and thereafter the proceeding [proceedings] touching the same shall be carried on as one suit. The demand of any one of the respondents for a jury shall be deemed to be a demand for all; and if they shall fail or neglect to unite in striking six names from the jury list, the judge shall strike off six names for them; and in such cases the jury shall not only determine the entire damages and compensation to be paid for the whole property taken, but shall, in their report, also justly and impartially apportion and award the amounts to be paid to the owner or owners of each estate in the land so taken.

(242) § 6364. SEC. 9. The commissioners shall take and subscribe the oath prescribed by article eighteen¹ of the constitution. Any of them may issue subpoenas, administer oaths to witnesses, and a majority of them may adjourn the proceedings before them from time to time in their discretion. Whenever they meet, except by appointment of the court or judge, or by previous adjournment, they shall cause reasonable notice of such meeting to be given to the parties who are to be affected by their proceedings, or the attorneys or agents of such parties. They may view the premises described in the petition, and shall hear the proof and allegations of the parties, and shall reduce the testimony, if any is taken by them, to writing, if requested to do so by either party, and after the testimony is closed in such case, and without any unreasonable delays, and before proceeding to the examination of any other claim, all being present and acting, shall ascertain and determine the necessity of taking and using any such real estate or property for the purposes described; and if they deem the same necessary to be taken, they shall ascertain and determine the damages or compensation which ought justly to be made by the company therefor to the party or parties owning or interested in the real estate or property appraised by them. They shall also determine and certify what sum ought to be paid to the general or

Duty of commissioners.

¹See Const. of 1909, Art. XVI, 2.

Pay of commissioners.

Duty of jury.

special guardian of an infant, idiot, or person of unsound mind, or to said court, to be held for an unknown party in interest not personally served with notice of the proceedings, and who has not appeared, for damages and cost or expenses and counsel fees. They shall make a report to said court or judge, signed by them, of the proceedings before them, if any, which may be filed with the clerk of the court, either in vacation or term time, or the probate court, as the case may be. Said commissioners shall be entitled to two dollars a day for each day they are engaged in the performance of their duties, to be paid in the first instance by the company. In case a jury shall have been demanded and ordered by the court, pursuant to section eight of this act, the said jury shall proceed to ascertain and determine the necessity of taking and using any such real estate or property, and the damage or compensation to be paid by the company therefor, in the same manner and with like effect as is provided in this section in the case of commissioners, and as is further provided in said section eight; but they shall all be present and act together during the proceedings, and before acting shall take and subscribe an oath that they will justly and impartially ascertain and determine the necessity of taking and using any such real estate or property for the purposes proposed; and if they deem the same necessary to be taken, will ascertain and determine the damages or compensation which ought justly to be made by said company to the owners of or persons interested in each particular description of real estate mentioned in said petition who have demanded said jury; and they shall be entitled to two dollars for each day they are engaged in the performance of their duties, to be paid in the first instance by the company. The said judge, or a circuit court commissioner to be designated by him, may attend said jury, to decide questions of law and administer oaths to witnesses, and he may appoint the sheriff or other proper officer to attend and take charge of said jury while engaged in said proceedings. And the jury shall proceed to determine the amount of damages to be awarded, and shall have all the powers hereby conferred upon commissioners; and a report signed by the jury, whether the judge is or is not in attendance, shall be valid and legal. At any time before the report of the jury or commissioners shall be made to the court, it shall be competent for the company, after sufficient cause has been shown and with leave of the court, to discontinue all pending proceedings in any case and to institute new proceedings at any time thereafter; but the company in all such cases shall pay all the costs of all proceedings so discontinued, with an attorney fee to be taxed as in cases at law.

Oath of jurors prescribed in this section sufficient.—Ft. St. U. Dep. Co. v. Morton, 83 / 265. The jurors are judges of both law and facts.—Ft. St. U. Dep. Co. v. Jones, 83 / 415. When the court may set aside the jury's award.—Id. Special questions cannot be submitted to the jury.—T. S. &

M. R. Co. v. Campau, 83 / 31, 33. As to setting aside award of jury.—Union Dep. Co. v. Backus, 103 / 556; Backus v. Gartner, 89 / 220; Ft. St. U. Dep. Co. v. Backus, 92 / 33. The jury is not bound to employ a stenographer to take the testimony; and the failure of the jury to reduce the testimony to writing is not reversible error, when appellant's demand for the same was coupled with a demand that a stenographer be employed.—Benton Harbor Terminal Ry. Co. v. King, 131 / 377. And the jury may hear evidence as to several distinct parcels of land at the same time.—Id.

(243) § 6365. SEC. 10. On such report being made by the commissioners or jury, the court, on motion, shall confirm the same on the next or any subsequent day when in session, unless for good cause shown by either party; and when said report is confirmed, said court shall make an order containing a recital of the substance of the proceedings in the matter of the appraisal, and a description of the real estate or property appraised, for which compensation is to be made, and shall also direct to whom the money is to be paid, or when and where it shall be deposited by the company. Said court, as to the confirmation of such report, shall have the powers usual in other cases.

Court to confirm report of commissioners.

Backus v. Gartner, 89 / 220; Union Dep. Co. v. Backus, 92 / 36; Union Dep. Co. v. Stove Co., 103 / 637.

(244) § 6366. SEC. 11. A certified copy of the order so to be made shall be recorded in the office of the register of deeds for said county, in the book of deeds; and thereupon, on the payment or deposit by the said company of the sum to be paid as compensation for such land, franchise, or other property, and for costs, expenses, and counsel fees as aforesaid, and as directed by said order, the company shall be entitled to enter upon and take possession of and use the said land, franchise, and other property for the purpose of its incorporation; and all persons who have been made parties to the proceedings, either by publication or otherwise, shall be divested and barred of all right, estate, and interest in such real estate, franchise, or other property, until such right or title shall be again legally vested in such owner; and all real estate or property whatsoever acquired by any company under and in pursuance of this act, for the purpose of its incorporation, shall be deemed to be acquired for public use: Provided, The said sum to be paid as damages and compensation, and costs, expenses, and counsel fees as aforesaid, shall be paid by the company, or deposited as provided in this act, within sixty days after the confirmation of said report by the said court; and in case said company fail or neglect so to do, such failure or neglect shall be deemed as a waiver and abandonment of the proceedings to acquire any rights in said land or property. Within twenty days after the confirmation of the report of the commissioners or jury, as above provided for, either party may appeal, by notice in writing to the other, to the supreme court, from the appraisal or report of the commissioners or jury; such notice shall specify the objections to the proceedings had in the premises, and the su-

Payment of damages.

Proviso.

Appeal.

preme court shall pass on such objections only, and all other objections, if any, shall be deemed to have been waived; such appeal shall be heard by the supreme court at any general or special term thereof, on notice thereof being given according to the rules and practice of the court. On the hearing of such appeal, the court may direct a new appraisal before the same or new commissioners or jury, in its discretion. The second report shall be final and conclusive upon all parties interested. If the amount of the compensation to be allowed is increased by the second report, the difference shall be a lien on the land appraised, and shall be paid by the company to the parties entitled to the same, or shall be deposited as the court shall direct; and in such case, all costs of the appeal shall be paid by the company; but if the amount is diminished, the difference shall be refunded to the company by the party to whom the same may have been paid, and judgments therefor and for all costs of the appeal shall be rendered against the party so appealing. On the filing of the report, such appeal, when made by any claimant of damages, shall not affect the said report as to the right and interests of any party, except the party appealing; nor shall it affect any part of said report in any case, except the part appealed from; nor shall it affect the possession of such company of the land appraised; and when the same is made by others than the company, it shall not be heard except on a stipulation of the party appealing not to disturb such possession during the pendency of such proceedings.

Backus v. Gartner, 89 / 222; *Union Dep. Co. v. Backus*, 103 / 563.

Payment
when title in
doubt.

(245) § 6367. SEC. 12. If there are doubts about the title, or to whom the money, or any part of it, to be paid as compensation for the real estate or property taken belongs, the court may direct the money to be paid into the said court by the company, and may determine who is entitled to the same, and direct to whom the same shall be paid, and may in its discretion order a reference to ascertain the facts on which such determination and order are to be made.

Court may
amend de-
fects in pro-
ceedings.

(246) § 6368. SEC. 13. The court shall have power at any time to amend any defect or informality in any of the special proceedings authorized by this act, as may be necessary, or to cause new parties to be added and to direct such further notices to be given to any party in interest as it deems proper; also to appoint other commissioners in the place of any who shall die, or refuse, or neglect, or are unable to serve, or who may leave or be absent from the state.

Backus v. Gartner, 89 / 225.

Perfecting
title.

(247) § 6369. SEC. 14. At any time after an attempt to acquire title by any such company by an appraisal of damages or otherwise, if it shall be found that the title thereby attempted to be acquired is defective, the company may pro-

ceed anew to acquire or perfect the same in the same manner as if no appraisal had been made, and at any stage of such new proceedings the court may authorize the corporation, if in possession, to continue in possession, and if not in possession, to take possession of and use such real estate or other property during the pendency and until the final conclusion of such new proceedings; and may stay all actions or proceedings against any company, or any officer or workman of such company on account thereof, on such company paying into court a sufficient sum, or giving security, as the court may direct, to pay the compensation therefor when finally ascertained; and in every such case [cause] the party interested in such real estate or other property may conduct the proceedings to a conclusion if the company delays or omits to prosecute the same.

(248) § 6370. SEC. 15. It shall be competent and law-^{Sale on mortgage.}ful for the trustees, in any deed of trust or mortgage of and upon the property of such company, in case of the inability of such company, or its default in the payment of the principal or interest money secured thereby, in pursuance of any power of sale contained therein, to offer the same for sale according to the power, and in pursuance of its terms, and on such sale to execute a deed of the premises sold, which said deed duly executed shall convey the title to the purchaser or purchasers, and authorize them to enter into possession and enjoyment thereof, as fully as may be provided in said mortgage or deed of trust; and it shall be competent and lawful for all companies organized under this act, for the purpose of securing their bonds, authorized to be issued in accordance with its provisions, to execute such mortgage or deed, with such power contained therein for the sale of the property mortgaged or deeded, as shall, in its judgment, or the judgment of the board, be found expedient, and such power of sale in accordance therewith shall be lawful and valid.

(249) § 6371. SEC. 16. All companies organized under this act shall have power from time to time to borrow such^{Borrowing money.} sums of money as may be necessary for completing, finishing, equipping or operating their tracks, depot, and other property, or for paying any indebtedness necessarily incurred for completing, finishing, or operating the same, or any part thereof; and to issue and dispose of their bonds or obligations for any amount necessarily borrowed for such purpose, for such sums and for such rate of interest, not exceeding ten per cent, as they may deem advisable, and to mortgage their corporate property and franchises and the income thereof to secure the payment of any debt contracted, or to defray any expenditure by the company for the purpose aforesaid. And the directors of any such company may confer on any holder of any such bond or obligation the right

Issuing
capital stock,
etc.

to convert the same into the stock of said company at any time not exceeding ten years from the date of said bonds, on such terms and under such regulations as the company may see fit to adopt; and said company may sell their bonds or obligations, either within or without this state, and at such rates and prices as they may deem proper. Any such company may at any time, with the concurrence of the stockholders representing a majority of the stock at any annual meeting, or at any special meeting of the stockholders called for that purpose, increase its capital stock, or provide for the issue of preferred or secured stock, for the purpose aforesaid, upon such terms and conditions as to them may seem meet. In case the capital stock of any such company or corporation organized under this act shall be found insufficient for acquiring and maintaining the necessary property to meet the purposes of its organization, such corporation may, with the concurrence of two-thirds in value of all its stock, increase its capital stock from time to time to any amount required for the purpose aforesaid; such increase shall be by a vote in person or by proxy of two-thirds in amount of all of the stock of such corporation, at a meeting of the stockholders called by the directors of the corporation for such purpose, by giving notice in writing to each stockholder, to be served personally, or by depositing the same in a postoffice, directed to the postoffice address of each of said stockholders severally, with necessary postage for the transmittal of the same prepaid, at least sixty days prior to the day appointed for such meeting, and by advertising the same in some newspaper published in the county in which the said depot shall be located, or if a newspaper shall not be published therein, then such meeting shall be advertised in two newspapers published in the city of Detroit at least sixty days prior to the day appointed for such meeting; and such notice shall state the time and place of the meeting, the object thereof, and the amount to which it is proposed to increase such capital stock, and at such meeting the corporate stock of such corporation may be so increased by a vote of two-thirds in amount of the corporate stock of such corporation, to an amount not exceeding that mentioned in the notice so given.

Annual statement to railroad commission.

(250) § 6372. SEC. 17. Every corporation incorporated under this act shall, on or before the first day of May, in the year of our Lord one thousand eight hundred and eighty-two, and on or before the same day in each and every year thereafter, make and transmit to the commissioner of railroads (railroad commission) at his office in Lansing, a full and true statement, under oath, of the proper officers of said corporation, of the affairs of said corporation on the thirty-first day of December preceding, specifying:

What to specify.

First, The amount of capital stock subscribed and by whom;

Second, The names of the owners of its stock, the amounts

owned by them respectively, and the residence of each stockholder so far as known;

Third, The amount of stock paid in and by whom;

Fourth, The amount of its assets and liabilities;

Fifth, The names and place of residence of its officers;

Sixth, The amount of cash paid to the corporation on account of the original capital stock;

Seventh, The amount of funded debt;

Eighth, The amount of floating debt;

Ninth, The cost of its real estate, including rights of way for tracks;

Tenth, The cost of its depots, buildings, and fixtures;

Eleventh, The cost of all other property;

Twelfth, The length of single main track;

Thirteenth, The length of double main track;

Fourteenth, The aggregate length of sidings and other tracks not above enumerated;

Fifteenth, Its monthly earnings from all sources respectively during the year;

Sixteenth, The amount of expense incurred in operating its business and maintaining its property during the year;

Seventeenth, All other expenses incurred by it, including the salaries of officers, which shall be reported separately;

Eighteenth, The amount expended for repairs and extension of tracks, including repairs and renewal of bridges and renewal of iron during the year;

Nineteenth, The amount expended for improvements during the year;

Twentieth, The amount expended for depot, station houses, buildings, and fixtures during the year;

Twenty-first, All other expenses during the year;

Twenty-second, What arrangements it has with other railroad corporations for use of its depot and other property, setting forth the contract for the same. And the said commissioner (commission) shall cause to be made suitable blanks at the expense of the state, and forward the same to such railroad corporations, upon which to make the reports required by this act.

As to the statement now required of these companies for purposes of taxation and the provisions relative to the assessment and collection of taxes therefrom, see Act No. 282 of 1905, in Chapter VII.

See Att'y General v. State Bd. of Assessors, 143 / 73.

(251) § 6373. SEC. 18. The said commissioner (commission) may make and propound to such corporations such other or additional interrogatories as in his judgment may be necessary, in order to gain full information in regard to the business of said corporations and the management thereof; and the provisions of an act entitled "An act to provide for the appointment of a commissioner of railroads, and to define his powers, duties, and fix his compensation," approved April three, eighteen hundred and seventy-three, and the

Interrogatories by railroad commission.

amendments thereto, shall apply to all corporations organized under this act, as far as applicable thereto.

Commission
to file with
auditor gen-
eral computa-
tion of tax.

(252) § 6374. SEC. 19. The commissioner of railroads (railroad commission) shall, on or before the fifteenth day of May in each year, make and file with the auditor general a computation of the amount of tax which will become due on the first of July from each company liable to pay taxes under the provisions of section twenty-one of this act, which computation shall be based upon the report of such company for the preceding year required to be made to the commissioner of railroads (railroad commission); and in case any of said companies shall fail to make such report to the commissioner of railroads (railroad commission), as provided by law, then the provisions of section twenty of this act shall apply as fully as though such report was required to be made direct to the auditor general.

Penalty for
neglect to
make report
or filing false
report.

(253) § 6375. SEC. 20. Any such company which shall neglect to make such report, or which shall wilfully make a false report, or refuse to answer fully and fairly such additional interrogatories of the commissioner (commission) as he may propound pursuant to the said preceding section, shall be liable to a penalty of one thousand dollars; and it shall be the duty of the auditor general, and he is hereby required in case any such corporation incurs the penalty aforesaid, to forthwith issue his warrant for the collection of the same, in the same manner and to levy and collect the same in all respects as is herein provided for the collection of taxes against such corporation; and the collection of such penalty shall not absolve the corporation from the obligation to make such report, but it shall still be its duty to make the same, and a wilful neglect or refusal to do so may be cause for a forfeiture of the corporate franchises.

Tax to be
paid state
treasurer.

(254) § 6376. SEC. 21. Every company formed under the provisions of this act shall, on or before the first day of July in each year, pay to the state treasurer, on the statement of the auditor general, an annual tax of two and one-half per cent upon the gross earnings of said company, which amount or tax shall be in lieu of all other taxes upon the property of such companies, except such real estate as is owned and can be conveyed by such corporation under the laws of this state, and not actually occupied in the exercise of its franchises, and not necessary for the proper use thereof; but such real estate so excepted shall be liable to taxation in the same manner, for the same purposes, and to the same extent, and subject to the same conditions and limitations as to assessment for taxation, to taxation, and to the collection and return of taxes thereon, as other real estate in the several townships, villages, and cities within which the same may be situated.

Union Depot Co. v. Com'r of Railroads, 118/340.

A grain elevator erected by a union depot company upon its property, and used as a grain warehouse in connection with its general business as a com-

mon carrier, is a necessary part of the equipment, and is not liable to taxation under the general tax law of the state.—U. Dep. Co. v. Detroit, 88 / 347.

(255) § 6377. SEC. 22. This state shall have a lien up- Lien of state on depot, etc.
on the depot, tracks, and other property of the companies or-
ganized under this act, and their appurtenances and stock
therein, for all penalties, taxes, and dues which may accrue
to the state from the companies, which lien of the state shall
take precedence of all demands, judgments, or decrees against
said companies; and each citizen of the state shall have a
lien upon all the personal property of said company, for all
penalties, dues, and demands against any such company to
the amount of one hundred dollars, originally incurred or
contracted within this state, which, after said lien of the
state, shall taken precedence of all other debts, demands,
judgments, or decrees, liens, or mortgages against said com-
pany.

(256) § 6378. SEC. 23. Every company formed under Company to maintain fences, etc.
this act shall erect and maintain fences on the sides of their
respective tracks, of the height and strength of a division
fence required by law, with fences and cattle-guards at all
highway and street crossings, sufficient to prevent cattle or
other animals from getting on such tracks; also gates or
bars convenient for farm crossings. Until such fences and
cattle-guards or ditches shall be duly made, such company or
corporation owning or operating such track shall be liable
for all damages done to cattle or other animals thereon,
which may result from the neglect of such company or cor-
poration maintaining or operating the same, to construct
and maintain such fences, cattle-guards, or ditches as afore-
said; and after such fences, cattle-guards, or ditches shall be
duly made and maintained, such company or corporation
shall not be liable for any such damages unless negligently
or wilfully done. Any violation of the provisions of this sec- Penalty.
tion shall be punished by a penalty of two hundred dollars
per week for each and every week that said company shall
fail to comply with the provisions of this section; and if any
person shall ride, lead, or drive, or intentionally permit any
horse or other animal upon such tracks and within such
fences and cattle-guards or ditches, other than farm cross-
ings, or shall injure or destroy, or make openings or passage
[passages] through or over such fences, cattle-guards, or
ditches, or neglect to close any gates or bars immediately
after passing through the same, without the consent of such
company or corporation, he shall for every such offense be
liable to a fine not exceeding one hundred dollars, and shall
also pay all damages which shall be sustained thereby to the
party aggrieved.

(257) § 6379. SEC. 24. Any such company shall be lia- Company liable for loss by fire, etc.
ble for all loss or damage to property by fire originating
either from engines passing over its tracks, fires set by com-

Proviso.

pany employes by order of its officers, or otherwise through the neglect of such company: Provided, That such company shall not be held so liable if it prove to the satisfaction of the court or jury that such fire originated from fire by engines whose machinery, smoke-stack, or fire-boxes were in good order and properly managed, or fires originating in building, operating, or repairing the same, and that all reasonable precautions had been taken to prevent their origin, and that proper efforts had been made to extinguish the same in case of their extending beyond the limits of such road, when the existence of such fire is communicated to any of the officers of such company.

Penalty for paying dividends when insolvent.

(258) § 6380. SEC. 25. If the directors of any corporation organized under this act shall declare and pay any dividend when the company is insolvent, or the payment of which would render it insolvent, they shall be severally liable to a penalty of five hundred dollars.

Penalty for making false report.

(259) § 6381. SEC. 26. If any certificate or report made of public notice given by the officers of any such company, in pursuance of the provisions of this act, shall be wilfully false in any material representations, all the officers who shall have signed the same, knowing it to be false, shall be severally liable to a penalty of five hundred dollars each.

To begin construction within one year, etc.

(260) § 6382. SEC. 27. If any such company shall not, within one year after its organization, begin the construction of its depots or tracks, and expend thereon forty per cent on the amount of the capital stock subscribed, and so far complete as to put the same in active operation with the necessary machinery and buildings for the most economical and rapid handling and transaction of all the business of all the companies using its tracks and station grounds, in three years from the time of its organization, its act of incorporation shall become void.

To provide suitable depots, etc.

(261) § 6383. SEC. 28. All companies formed under this act shall, for a reasonable compensation, provide suitable depot accommodations for the passengers and freight of the railroads terminating or connecting with it, or desiring access thereto; and shall provide suitable tracks therefor without discrimination in favor of or against any of such roads. If the corporations can not agree upon the terms and conditions upon which such accommodations shall be furnished and the business transacted, the commissioner of railroads (railroad commission) shall determine the rate of compensation to be paid for the accommodations required, which shall be uniform to all such railroad companies; but no such rate shall be fixed as will reduce the net annual income of the business of said company to less than seven per cent on the cost of the property so used.

(262) § 6384. SEC. 29. Companies formed under this act shall not at any time charge or receive for warehouse or elevator service or use more than the average rates then prevailing at the cities of Toledo in Ohio, and Port Huron in Michigan, for like service or use. Every violation of the provisions of this section shall render the company so offending liable to a penalty of five hundred dollars. Rate of charges.
Penalty.

Union Dep. Co. v. Morton, 83 / 269; Det. U. Dep. Co. v. Detroit, 88 / 349.

(263) § 6385. SEC. 30. Any union railroad station and depot company may, and whenever it is expedient and such trains will pay the expenses thereof, shall put on local passenger trains to do a local and suburban passenger business, and for such local business upon or to the end of its tracks shall be entitled to charge for each passenger not exceeding four cents per mile; and upon the application of any ten suburban citizens for the establishment of such trains, unless the said company comply with the request it shall be upon the same request to the commissioner of railroads (railroad commission) competent for him to investigate and determine whether such trains shall be established, and if in favor thereof it shall be the duty of such company to establish and maintain them so long as he shall require it to be done. Local trains, etc.

This section does not embrace an object not stated in the title.—Ft. St. U. Dep. Co. v. Morton, 83 / 265.

(264) § 6386. SEC. 31. It shall be competent and lawful for any corporation formed under this act to negotiate and enter into agreements with any other railroad company existing under the laws of this state and already owning station grounds, to unite and consolidate the station grounds of the two companies, to be worked together for mutual convenience, or to erect and maintain passenger stations and depots upon the lands of either for the common use of all the railroad companies using or desiring to use the grounds and terminal facilities and property of either company, upon such terms as may be mutually agreed upon; and may enter into and make such other agreements and arrangements as may be found proper and expedient for mutual convenience and the most economical use of the grounds and terminal accommodations of either or both of such contracting companies, and all such arrangements and agreements shall be valid and binding upon both parties. And any company entering into any such consolidation or agreement may take and hold stock in any depot company formed under this act, anything in this act to the contrary notwithstanding. Consolidation of station grounds.

(265) § 6387. SEC. 32. Any corporation organized under this act, at any village or city, requiring tracks of considerable length to connect other railroads with its station grounds, and where there may exist or spring up business establishments, manufacturing or otherwise, needing or May build side tracks to accommodate business.

which may be fostered and promoted by easy access to railroads, shall have the right and authority to build side tracks to accommodate the business of all such establishments, and shall provide the necessary power and rolling stock for such purpose, charging only reasonable rates for the transaction of all such business.

Consolidation
of companies.

(266) § 6388. SEC. 33. It shall be competent for any railroad company organized under the laws of this state in the vicinity of any city or village for suburban business, to consolidate its stock, property, and effects with any company organized under this act, upon such terms as may be mutually agreed upon by the unanimous consent of all stockholders of both companies, and such consolidated companies shall be liable for all the obligations and entitled to all the privileges of either company. And it shall be competent and lawful for any company organized under this act to aid such suburban railroad company to construct its railroad either by taking stock therein or guaranteeing its bonds, or in any other form which the two companies may agree upon, and to secure such loans of credit or money or other advance of means, and may enter into agreement to work and operate such suburban railroads or take a lease of the same upon such terms as may be mutually agreed upon, and any such contract for consolidation, lease, or other form of security made between the said companies, when filed with the secretary of state for record, shall be prima facie evidence of such consolidation, lease, or contract, and of all the statements therein contained.

One company
may aid
another com-
pany in con-
struction.

Where con-
tract to
be filed.

Liability of
company for
causing death.

(267) § 6389. SEC. 34. Whenever the death of a person shall be caused by wrongful act, neglect, or default of any such company, or its agents, and the act, neglect, or default is such as would (if death had not ensued) entitle the party injured to maintain an action and recover damages in respect thereof, then and in every such case the corporation which would have been liable if death had not ensued, shall be liable to an action on the case for the damages, notwithstanding the death of the person so injured, and although the death shall have been caused under such circumstances as amount in law to felony.

See notes to section 227 ante.

How action
brought.

(268) § 6390. SEC. 35. Every such action shall be brought by and in the names of the personal representatives of such deceased person, and the amount recovered in any such action shall be distributed to the persons, and in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate; and in every such action the jury may give such amount of damages as they shall deem fair and just, to the persons who may be entitled to such damages when recovered.

See notes to section 228 ante.

(269) § 6391. SEC. 36. All penalties incurred under this act, when not otherwise provided for, may be sued for in the name of the people of the state of Michigan, and if such penalty be for a sum not exceeding one hundred dollars, then such suit may be brought before a justice of the peace.

Penalties may be sued for in name of people.

(270) § 6392. SEC. 37. This act may at any time be altered, amended, or repealed, but such alteration, amendment, or repeal, shall not affect the rights of property of companies organized under it; nor shall the dissolution of any such company take away or impair any remedy given for or against such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

Act may be amended, etc.

(271) § 6393. SEC. 38. Any corporation organized under this act, shall have power, with the consent of the common council of any city, or the village board of any village, in which the station and depot grounds of such company are located, to occupy and close any highway, street, or alley within the limits of its station and depot grounds, but such company shall pay to the parties entitled to the same, any and all damages that may accrue to them, in consequence of the closing of any such highway, street or alley; and such damages may be recovered in an action on the case in any court of competent jurisdiction, and his right of action shall obtain from and after the granting of consent of the common council or board of trustees aforesaid.

Power to close or occupy any street, etc.

Company to pay damages, etc.

Buhl v. Union Depot Co., 98 / 597.

SECTION III.—TRAIN RAILWAY COMPANIES.

An Act to provide for the construction of train railways.

[Act 148, Laws of 1855.]

The People of the State of Michigan enact:

(272) § 6394. SECTION 1. That any number of persons, not less than three, may be formed into a corporation for the purpose of constructing, owning, and operating a train railway or road for the conveyance of persons or property, to be operated by horse or other animal power, or by steam, or by pneumatic or any other motive power, or by any combination of them, as shall be determined by the board of directors, by complying with the following requirements: Notice shall be given in at least one newspaper printed in any county through which or in which such railway is intended to be constructed, of the time and place or places where books for subscribing for the stock thereof will be opened, and if there be no newspaper printed in the county, then such notice shall

Three or more persons may organize.

Notice to be published.

When may
elect direct-
ors, etc.

What articles
of association
shall contain.

be printed in the city of Detroit; and when stock to the amount of one thousand dollars per mile of the said railway so intended to be built shall be in good faith subscribed, and ten per cent paid thereon, as hereinafter required, then the said subscribers may, upon due and proper notice, elect directors for said corporation; and thereupon they shall severally subscribe articles of association, in which shall be set forth the name of the company; the number of years the same shall be continued, which shall not exceed thirty years from the date of said articles; the amount of the capital stock of said company; the number of shares of which said stock shall consist; the number of directors and their names, who shall manage the concerns of the company for the first year, and shall hold their offices until others are elected; the place from and to which the proposed railway is to be constructed, and each mine, city, and village to or through which it is intended to pass, and its length, as near as may be.

Taylor v. B. C. St. Ry. Co., 80 / 77; 101 / 140; Detroit v. Railway Co., 95 / 458; Detroit City Ry. Co. v. Mills, 85 / 634; Nichols v. Railway Co., 87 / 368; Detroit St. Rys. v. Guthard, 51 / 180; Grand Rapids St. Rys., 48 / 433; G. R. & I. R. Co. v. Heisel, 38 / 62; Le Roy v. E. Sag. City Ry., 18 / 233; Monroe City v. Railway Co., 143 / 315.

PURPOSE AND VALIDITY: The purpose of this act is to provide for local railway transportation: the amendment is not unconstitutional because the original act provided only for the carriage of freight, while the amendment provides for the transportation of passengers also.—Det. City Ry. Co. v. Mills, 85 / 634; Nichols v. Railway Co., 87 / 368.

TRAIN OR TRAM: The word "tram" is a clerical mistake for "train."—Grand Rapids St. Ry. Co. v. Railway Co., 48 / 435. The word "train," as used in this law, is defined to be a "continuous or connected line of cars or carriages on a railroad."—Det. City Ry. v. Mills, 85 / 647.

STREET RAILWAY: Where the purpose for which a railroad was constructed and is operated is that of a steam railroad, to carry freight to manufactories not otherwise accessible, by the steam railroads, the facts that the company owning it was organized under the train railway act, and that the track is laid along a highway, do not make its use that of a street railway, etc.—Detroit v. Detroit Mfrs. Railroad, 149 / 530.

Name, resi-
dence and
number of
shares to be
subscribed.

Persons asso-
ciated to be
a body cor-
porate.

Powers, privi-
leges and
liabilities.

(273) § 6395. SEC. 2. Each subscriber to such articles of association shall subscribe thereto his name, by himself or by his attorney, his place of residence, and the number of shares of stock taken by him in said company; the said articles of association may, when the provisions of the next section are complied with, be filed in the office of the secretary of state, and thereupon the persons who have so subscribed, and all persons who shall from time to time become stockholders in such company, shall be a body corporate by the name specified in such articles, and as such shall be capable of suing and being sued, in all courts and in all manner of actions, and may have a common seal, and be capable of purchasing and acquiring from any person or persons, by gift, grant, or otherwise, and holding any land, tenements or hereditaments, necessary to be used in the construction, repair and preservation of said railway, and the erection of toll gates and houses thereon, and may by by-laws prescribe the manner of calling and conducting the meetings of the stockholders, and shall possess the powers and privileges,

and be subject to the provisions contained in chapter fifty-five of title ten of the revised statutes of this state, entitled "General provisions relating to corporations," as far as the same shall be applicable, and not inconsistent with the provisions of this act.

(274) § 6396. SEC. 3. Such articles of association shall not be filed in the office of the secretary of state until ten per cent on the amount of the stock subscribed thereto shall have been actually and in good faith paid to the directors named in such articles, nor until there is endorsed thereon, or annexed thereto, an affidavit by at least two of the directors, that the amount of the capital stock required by the first section of this act has been subscribed, and that ten per cent on the amount has been actually paid in; and no stockholder shall be entitled to vote for directors of any company of which he may be a member, or for any other purpose, unless all assessments due on his stock shall be paid before such election.

When articles to be filed with secretary of state.

(275) § 6397. SEC. 4. A copy of any articles of association, filed in pursuance of this act, with a copy of the affidavit aforesaid endorsed thereon, or annexed thereto, and certified by the secretary of state to be a true copy, and of the whole of such articles of association, and of the affidavit endorsed thereon or affixed thereto, shall be, in all courts and places, presumptive evidence of the incorporation of such company, and of the facts therein stated.

Certified copy of articles to be evidence.

(276) § 6398. SEC. 5. The business and property of such company shall be managed and directed by a board of not less than three nor more than seven directors, who, after the first year, shall be elected annually, or once in two years, as the by-laws of said company shall direct, and at such time and place as said by-laws may direct; and public notice shall be given of the time and place of holding such election, not less than twenty days previous thereto, in such manner as the by-laws of such company may direct; the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as he shall own shares of stock, and the persons having the greatest number of votes shall be directors. Whenever any vacancy shall happen in the board of directors, such vacancy shall be filled for the remainder of their term by the remaining directors. The directors shall hold their offices for one or two years, as said by-laws may direct, and until others are elected in their places, and no person shall be a director unless he is a stockholder in said company.

Board of directors to manage affairs, their number, etc.

Notice of election, etc.

Vacancy, how filled.

Terms and qualifications of directors.

(277) § 6399. SEC. 6. In case it shall happen that an election for directors shall not be held as provided, the said corporation shall not be, for that reason, dissolved, but such election shall be held on some future day, to be fixed by the directors holding over, upon giving the notice therefor, as in

Election in certain cases, when held.

this act provided, and all acts of the directors shall be binding upon such corporation.

Majority of directors quorum.

(278) § 6400. SEC. 7. A majority of the directors shall be a board for the transaction of business, and the acts of a majority of the board shall bind the corporation.

President and treasurer to be elected.

(279) § 6401. SEC. 8. The directors, at their first meeting after their election, shall choose by ballot one of their number as president, and one as treasurer, and they shall supply any vacancy in the office of president or treasurer, whenever the same shall occur.

Powers of board of officers.

(280) § 6402. SEC. 9. The president and directors shall have power to make and prescribe such by-laws, rules and regulations, respecting the transfer of stocks, and the management and control of the property and affairs of such corporation, as they may deem best, not inconsistent with the laws of the United States or of this state, and shall have power to appoint and employ officers, clerks, agents and servants, for conducting and carrying on the business of such incorporation, and determine their duties and salaries, and wages to be paid to them.

As to the applicability of the ten hour law of 1885 (act 137) to street railway employes, see *Bartlett v. St. Ry. Co. of Grand Rapids*, 82 / 658.

May enter upon lands for the purpose of surveying line of road, etc.

(281) § 6403. SEC. 10. It shall be lawful for such company, their officers, engineers and agents to enter upon any lands for the purpose of exploring, surveying, and locating the route of such railway, doing thereto no unnecessary damage, and paying any damage that may accrue; nor shall such company locate such road through any orchard or garden without the consent of the owner thereof, nor through any buildings or erections for the purpose of trade or manufacture without permission from the owner or owners; and when the said route shall be determined by said company, it shall be lawful for their officers, agents, engineers, contractors and servants, to enter upon, take possession of, and use such lands, to the width of one hundred feet, as said company may have purchased or obtained from the owners and occupants the right to use; and also to enter upon, take, and use any other lands which may be necessary for the purpose of constructing and maintaining thereon such railway, toll-houses, gates, fixtures, and appurtenances, the necessity for taking such lands for such purposes, and the damages to be paid therefor, being first ascertained, and such damages paid as provided in sections thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven of an act entitled "An act to provide for the formation of companies to construct plank roads," approved April eighth, eighteen hundred and fifty-one. If, at any time after the location and use of the track of any railway company organized under the provisions of this act, it shall

Width of road.

How damages for right of way, etc., ascertained and paid.

appear to the directors of said company that the line, in some parts thereof, may be improved, it shall be lawful for said directors from time to time to alter the line, and when a new line is adopted, to take possession of the lands, embraced in such new location, that may be required for the construction and maintenance of said road on such new line, and the convenient accommodations appertaining to the same, either by agreement with the owner or owners, or by such proceedings, as near as may be, as are authorized under this act, and use the same in place of the line for which the new line is substituted.

Provision for changing line and taking land for new line.

Aud. Gen. v. Maier, 95 / 130.

(282) § 6404. SEC. 11. The said corporation shall not, in their corporate capacity, hold, purchase or deal in any lands on which such railway shall run, except what may be necessary for the construction or maintenance thereof, and of the gates, toll-houses and other fixtures connected therewith.

Power to hold lands, etc., restricted.

(283) § 6405. SEC. 12. Such company so formed may procure by purchase or gift, from the owners thereof, any lands necessary for the construction of such railway, or for the erection of gates, toll-houses and other fixtures, or may obtain from the owner or occupant the right to use the same for the purposes aforesaid, on such terms as may be agreed upon.

May purchase or lease necessary lands.

(284) § 6406. SEC. 13. Whenever such company shall have completed any part of such railway for use, it shall be lawful for such company to erect toll-gates thereon, and demand and receive from persons using such railway not exceeding the following rates of toll, namely: For every coal car, ore car, or other vehicle drawn over said railway, four cents per mile, or at the same rate for any distance less than a mile, when such car or vehicle shall not be loaded; and when such car or vehicle shall be loaded, then in addition to the toll aforesaid, not exceeding four cents per mile for each ton of coal, copper, iron ore, lumber, or other mineral or commodity transported or carried over such railway. Such toll-gates to be erected by such company, may be as many in number, and located at such points as such company may deem necessary. Any person using such railway may, upon the payment of the requisite amount of toll, demand and receive at any gate a ticket, or other evidence that he has paid the toll for the use of the whole or part of such railway, which ticket may be shown by him at each gate through which it may entitle him to pass, and shall be surrendered by him to the toll-gatherer through whose gate he is last entitled to pass.

Toll may be collected, etc.

Rates.

Number of gates.

Ticket.

(285) § 6407. SEC. 14. Any railway constructed under this act shall be open to all persons for use, upon the payment of tolls as aforesaid, for the passage and repassage of

Who may use toll roads.

Proviso.

cars and vehicles; constructed to carry minerals, lumber or other freight upon such railway, at such times and under such rules and regulations in regard to the passage of cars or vehicles each way upon such railway as the authorized agent or agents or the engineer thereof may prescribe: Provided however, That the provisions of this section and section thirteen of this act shall not apply to any railway company organized under this act, the major portion of whose tracks are within the corporate limits of any incorporated city or village, and such railway may fix its own rates of toll or charges, except for passenger fares, and may also make joint traffic arrangements with any other railway or unite with it in the ownership or use of any railway franchise or property and may acquire or lease from any other railway its corporate franchise and property or any interest therein or sell or lease its own. And such railway company may acquire any real estate, property or franchise required for the purpose of its incorporation, in the manner, on the terms and conditions, and by the proceedings, provided and set forth in sections fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven of article two of chapter ninety-one of Howell's annotated statutes of the state of Michigan, and acts amendatory thereof.

Am. 1899, Act 132.

Directors
may require
payment of
stock sub-
scribed, etc.

Forfeiture for
non-payment.

Notice re-
quired to be
published.

(286) § 6408. SEC. 15. The directors of any company incorporated under this act, may require payment of the sums subscribed to the capital stock at such times, and in such proportion, and on such conditions as they shall see fit, under the penalty of the forfeiture of the stock, and all previous payments thereon, if payment shall not be made by the stockholders within sixty days after personal notice, or notice requiring such payment shall have been published, for six successive weeks, in a newspaper in the county or counties wherein such railway is situated; or if there be no newspaper published in such county or counties, then in a newspaper published in the city of Detroit; and they shall give notice of the payments thus required, and of the place and time where and when the same are to be made, at least thirty days previous to the payment of the same, in the newspaper or newspapers before mentioned, or by sending such notice to each stockholder by mail, directed to him at his usual place of residence.

Shares deemed
personal
property.

(287) § 6409. SEC. 16. The shares of any company formed under this act shall be deemed to be personal property, and may be transferred as shall be prescribed by the by-laws of such company. The directors may at any time receive subscriptions to stock in such company, until the whole amount mentioned in the articles of association shall be sub-

scribed; and whenever, in the judgment of said directors, it shall be necessary to increase the capital stock of any such company, for the extension or more perfect construction, equipment or furnishing of its railway, or to provide lands or buildings needful for its use, it shall be competent for such directors, with the approval or ratification of the holders of a majority of the capital stock, at any lawful meeting of stockholders, to provide for such increase; and in all cases where such capital stock has been heretofore increased, or shall hereafter be increased, a certificate thereof, signed and certified as hereinafter required in case of amendments to articles of association, shall be filed in the office of the secretary of state.

Whenever capital stock shall be increased.

Certificate filed with secretary of state.

(288) § 6410. SEC. 17. Within sixty days after the formation of any company under this act, the directors thereof shall designate some place within a county where such railway is intended to be constructed as the office of such company, and shall give public notice thereof, by publishing in some newspaper published in such county, if there be one, and if there be none, then in a newspaper published in the city of Detroit, which publication shall be continued once in each week, for three successive weeks, and shall file a copy of such notice in the office of the register of deeds, in each county where such road may be constructed, or intended to be; and if the place of such office shall be changed, like notice of such change shall be published and filed as aforesaid, before it shall take place, in which notice the time of making the change shall be specified; and every summons, notice, declaration, or other paper or process required by law to be served, may be served by leaving the same at such office, with any person having charge thereof, at any time except Sunday.

Place of office to be designated by directors.

Notice thereof.

Change of place of office.

(289) § 6411. SEC. 18. The stockholders of every company incorporated under this act, shall be jointly and severally liable, in their individual capacity, for all labor performed for such company; and shall also be liable for the debts of such company, for an amount equal to the amount of any unpaid stock in such company, held by them at the time such debt was contracted, and suit commenced thereon, to be recovered of any stockholder who is such when the debt is contracted, or any subsequent stockholder.

Individual liabilities of stockholders.

As to stockholders' liability, see Const. xii, 4. (Section 20 ante.) The liability is not affected by the sale of his stock after the labor is performed and before suit brought.—Voight v. Dregge, 97 / 322. See Bohn v. Brown, 33 / 257.

(290) § 6412. SEC. 19. If the directors of any company formed under this act shall declare or pay any dividend when the company is insolvent, or the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they, and all stockholders who shall knowingly accept or receive such dividend, shall be

Liability for declaring dividend when company insolvent.

jointly and severally individually liable for all the debts of such company then existing, and for all that shall be thereafter contracted, while they shall respectively continue stockholders, or in office.

Stockholders not liable until execution against company is returned unsatisfied.

(291) § 6413. SEC. 20. But no suit shall be brought against any individual stockholder or stockholders, for any debt of such company, as provided in the last two preceding sections, until judgment on the demand shall have been obtained against the company, and execution thereon returned unsatisfied in whole or in part, or until the company shall have been dissolved; and any stockholder who may have paid any debt of such company, either voluntarily or by compulsion, shall have a right to sue and recover of such company the full amount thereof, with interests, costs, and expenses; and any such stockholder, who may have paid as aforesaid, shall have a right to bring an action against, and recover of the rest of the stockholders, or any one or more of them, the due proportion thereof, which such stockholder or stockholders ought to pay; and if such action for contribution shall be brought against more than one stockholder, the judgment and the execution thereon shall specify the amount to be recovered and collected from each defendant.

Contribution may be enforced.

Directors to make report on oath.

Contents of report.

(292) § 6414. SEC. 21. On or before the first Monday in January in each year, it shall be the duty of the directors of every company formed under this act, to report to the secretary of state, under the oath of at least two of such directors, the length of railway completed, the cost of constructing the same, the amount of all moneys expended, the amount of their capital, how much of the same is paid in, and how much is expended, the whole amount of tolls or earnings expended on said road, the amount received during the previous year for tolls and from all other sources, stating each separately, the amount of dividends made, the amount set apart for repairs, and the amount of indebtedness of such company, specifying the object for which such indebtedness accrued: Provided, That the year contemplated in this section, so far as relates to the upper peninsula, shall terminate on the last day of September next preceding.

Proviso, upper peninsula.

Section 22 provided for a specific tax in lieu of all other taxes. It was repealed by Act No. 6 of 1882. See *Le Roy v. E. Sag. City Ry.*, 18/233. But the tax on dogs, not being imposed on property, but being a police regulation (*Van Horn v. People*, 46/183) is not included in this exemption.—*Hendrie v. Kalthoff*, 48/306. As to change in rate of taxation by amendment of the law, see *Detroit St. Rys. v. Guthard*, 51/180. Constitutionality of repeal.—*Id.*; *Detroit v. Railway Co.*, 76/426.

Punishment of toll-gatherer for illegal demands, etc.

(293) § 6415. SEC. 23. Every toll-gatherer, at any such gate, who shall unreasonably hinder or delay any person entitled to pass, by the provisions of this act, or shall demand or receive from any person more toll than, by law, he shall be authorized to collect, shall, for each offense, forfeit the sum of five dollars to the party aggrieved and shall be liable to the party aggrieved for all damages.

(294) § 6416. SEC. 24. Whenever a judgment is obtained against a toll-gatherer for a penalty, or for damages for acts done or omitted to be done by him in his capacity as toll-gatherer, and goods and chattels of such defendant, to satisfy such judgment, cannot be found, it shall be paid by the corporation whose officer he shall be; and if, on demand, payment shall be refused by the corporation, the amount of such judgment, with costs, may be recovered of such corporation.

Company holden for judgment against toll-gatherer.

(295) § 6417. SEC. 25. It shall be the duty of the directors of every such company to affix and keep up at or over each gate, where it can be conveniently read, a printed list of the rates of toll demanded at such gate.

List of tolls to be posted up, etc.

(296) § 6418. SEC. 26. Each toll-gatherer may detain and prevent from passing through his gate, all persons with cars or vehicles, authorized to pass upon paying tolls, until they shall have paid, respectively, the tolls authorized by law.

Cars, etc., may be retained till toll paid.

(297) § 6419. SEC. 27. If any person shall wilfully obstruct, break, injure or destroy any railway constructed or operated under the provisions of this act, or any part thereof, or any work, cars, buildings, fixtures or toll-gates attached to, or in use upon the same, belonging to said company, such person or persons so offending shall, for every offense, be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail or state prison not more than one year, in the discretion of the court.

Punishment for obstructing road.

(298) § 6420. SEC. 28. Any person who shall forcibly or fraudulently pass any toll-gate, erected on such railway in pursuance of this act, without having paid the legal toll, shall, for each offense, be liable to a fine not exceeding twenty-five dollars, to be sued for and recovered by said company.

Penalty for forcibly passing gate, etc.

(299) § 6421. SEC. 29. Every company incorporated under this act may be dissolved, and their corporate franchises taken from them, if they fail within one year to enter upon the construction of their railway, and to expend within that time at least ten per cent of the amount of their capital stock.

May forfeit franchise.

(300) § 6422. SEC. 30. All companies formed under this act shall at all times be subject to visitation and examination by the legislature, or a committee appointed by either house thereof, or by any agent or officer in pursuance of law; and the courts of this state shall have the same jurisdiction over such corporation and their officers, as over those created by special acts.

Subject to visitation, etc.

(301) § 6423. SEC. 31. The legislature may at any time alter, amend or repeal this act, but such alteration, amendment, or repeal, shall not operate as an alteration or amendment.

Legislature may alter, amend or repeal this act.

ment of the corporate rights of companies formed under it, unless specially named in the act so altering or amending this act, nor shall the dissolution of any such company take away or impair any remedy given for or against such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

Sec. 32 was an immediate effect section. As to amendment or repeal.—*Detroit St. Rys. v. Guthard*, 51 / 180.

Street
railways.

(302) § 6424. SEC. 33. It shall be competent for parties to organize companies under this act to construct and operate railways in and through the streets of any town or city in this state.

Amendments of 1861.—*Nichols v. Railway Co.*, 87 / 367; *Taylor v. St. Ry. Co.*, 80 / 79.

Exclusive
right.

Proviso.

Consent of
authorities.

Proviso.

Regulations
which may
not be made.

(303) § 6425. SEC. 34. All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways constructed, owned or held by them: Provided, That no such company or corporation shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of such town or city, and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe: Provided, further, That after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the street in such consent or grant named, pursuant to the terms thereof.

Telephone Co. v. Benton Harbor, 121 / 516. Power to grant the exclusive privilege of occupying the streets for street railway purposes is not conferred upon municipal corporations by this section.—*Street Ry. Co. v. Detroit*, 110 / 385.

Corporation
may borrow
money.

May execute
mortgage
therefor.

(304) § 6426. SEC. 35. It shall be lawful for any corporation or association organized under the act hereby amended, for the purpose of building and operating street railways, to borrow money for the purpose of constructing and operating the road or roads proposed to be constructed by them, and for that purpose to mortgage, or create any other lien upon their franchise, road, superstructure-fixtures, rolling stock and equipments; and whenever such corporation or association shall have acquired a simple easement or right of way for its proposed road, or any part thereof, and shall have made and filed its articles of association in conformity to the provisions of the act hereby amended, any mortgage or mortgages executed by such corporation or association, upon the route or routes where such easement or right of

way has been obtained, as aforesaid, shall be a legal and valid lien upon the right of way so obtained, to the entire extent of the interest of such corporation or association therein, and upon the superstructure and fixtures upon such route or routes, whether the same shall be built before or after, or partly before and partly after such mortgaging, and any such mortgage shall be deemed to be a mortgage upon real estate.

Grand Rapids St. Railways, 48 / 433. Rights of execution purchasers of franchises of the company.—McKee v. St. Ry. Co., 41 / 274. Special privileges, unlike the right to corporate existence have an actual value in connection with the property adapted to their use and are salable with it.—Citizens St. R. Co. v. Common Council, 125 / 670, 682.

(305) § 6427. SEC. 36. In the articles of association of any company, formed for the construction and operating of a street railway in any city, it shall be a sufficient designation of the route or routes thereof, to declare that said railway is to be constructed and maintained in such streets or public ways of the particular city as has been, or shall thereafter from time to time be granted to said company for that purpose by the proper municipal authorities of such city; and it shall be lawful to build, maintain or extend the railway of such company, according to the terms and conditions of such grant or grants. Any such company heretofore organized, may amend its articles of association to conform to this section, in the manner hereinafter provided for amendments.

Sufficient designation in articles.

Power to amend.

(306) § 6428. SEC. 37. Whenever any such corporation or association, as herein provided, shall desire to build or extend their track and road along any of the public highways of this state, not included within the limits of any city or incorporated village, such corporation or association shall have the exclusive right to so build and extend, provided such corporation or association shall first obtain the written consent to such building and extension of the supervisor, and a majority of the commissioners of highways of the town or towns in which such highways are located, respectively, and which said consent may contain such regulations in reference to the construction, location and operation of the portion of said road in such town or towns as may be agreed upon between the corporation and said officers respectively, which are hereby made valid and effectual, and such consent or consents shall be filed in the office of the township clerk of the town or towns respectively: Provided, No regulation made, as aforesaid, shall prevent or obstruct the free use of such highway by the traveling public.

Authorized to use public highways.

Proviso.

Proviso.

The statute confers upon the supervisor and highway commissioner the power to consent to regulations in reference to the construction, location and operation of the portion of the road in the township, and courts have not the power to review their action.—Silsby v. Lyle, 117 / 327.

How articles may be altered or amended. (307) § 6429. SEC. 38. Any company already organized or to be organized under this act may, from time to time, by a vote of the holders of a majority of the capital stock of such company, at any lawful meeting of the stockholders, alter and amend the articles of association of said company, in any or all of the following particulars, namely: The amount of capital stock, the number of shares into which the same shall be divided, and the number of directors; and such alterations and amendments, when duly drawn up, certified and signed by the president and secretary of such company, sealed with its corporate seal, and filed in the office of the secretary of state, shall become operative and have the same effect as are given by law to original articles of association.

Particulars.

When amendments become operative.

Sections added in 1867.—Nichols v. Railway Co., 87 / 367.

Power to lease. (308) § 6430. SEC. 39. Any company already organized or to be organized, under this act, for street railway purposes, may, whenever the same shall be authorized or approved at any lawful meeting, by a vote of the holders of a majority of the whole capital stock, lease its railway, stock and appurtenances for the running and operating the same for any term, not exceeding ten years at any one time: Provided, That notwithstanding such lease, the company shall remain subject to all the corporate obligations and liabilities. No street railway shall be open to the use of any person for the running of cars thereon, except under the authority of the owners thereof.

Proviso.

Nichols v. Railway Co., 87 / 367.

Cars operated by steam. (309) § 6431. SEC. 40. The cars on the street railway of any company organized under this act, may be operated by steam, or by any power other than animal power, whenever the municipal authorities of the city where such railway is situated shall authorize the same.

Nichols v. Railway Co., 87 / 367; Detroit City Ry. Co. v. Mills, 85 / 649.

How companies may intersect, cross or join with other roads. (310) § 6432. SEC. 41. Any railway company now or hereafter to be organized under this act, shall have the right to cross, intersect, join and unite its railway with any other railway or railroad now or hereafter constructed, whether the same be so constructed under this act or under any charter now or hereafter granted, at any point on its route, and upon the grounds of such other railway or railroad company, with the necessary turn-outs, sidings, and switches, and other conveniences, in furtherance of the object of its connections, and to make all such running and business arrangements as said companies may agree upon; and every company, whose railway or railroad shall be intersected by any new railway or railroad, shall unite with the owners of such new railway or railroad in forming such intersections and

connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made for such crossings and connections, or the points or manner thereof, the same shall be ascertained and determined by commissioners, to be appointed by the court, as is hereinbefore provided for the taking of lands and other property, and to purchase or to take lands, franchises, or other property, as hereinbefore provided, which shall be necessary for the construction of its road.

Manner of determining compensation when companies cannot agree.

This section does not give a company, operating as a street railroad, the right to make a connection with another railroad in a city street without consent of the city authorities.—City of Monroe v. D. M. & T. Ry., 143 / 316.

(311) § 6433. SEC. 42. All the provisions of this act, as amended, shall be applicable to all corporations now organized under this act, as though specifically named.

To what corporations this act applicable.

SECTION IV.—STREET RAILWAY COMPANIES.

An Act to provide for the formation of street railway companies.

[Act 35, Laws of 1867.]

The People of the State of Michigan enact:

(312) § 6434. SECTION 1. That street railway companies may be organized under the provisions of this act.

There is no more difficulty in allowing individuals to exercise these powers than corporations, and the use of them for a brief period in no way interferes with the protection of the franchise in perpetuity.—McKee v. G. R. & R. L. St. Ry. Co., 41 / 279-80. See Smith v. J. & B. C. Tr. Co., 137 / 20.

(313) § 6435. SEC. 2. Any number of persons, not less than three, desiring to form a corporation for the purpose of constructing, owning, maintaining or using any street railway in any city, village or township in this state, may by articles of agreement in writing, associate for that purpose, under any name assumed by them in their articles of association: Provided, That no two companies shall assume the same name.

Authorizing companies.

Proviso.

(314) § 6436. SEC. 3. Such articles of association shall be signed by the persons associating in the first instance, and acknowledged before some officer authorized by the laws of this state to take acknowledgment of deeds, and shall state:

Acknowledgment of articles.

First, The name by which the corporation shall be known in the law;

Articles of association.

Second, Definitely and distinctly the purpose for which the corporation is formed;

Third, The amount of their capital stock, and the number of the shares thereof;

- Fourth, The names of the stockholders, their respective residences, and the number of shares held by each;
- Fifth, The city or village in which the office for the transaction of their business shall be located, and where their business is to be carried on;
- Sixth, The term of the existence of the corporation, which shall not exceed thirty years;
- Seventh, The number of the directors of the corporation, and the names of those who shall be directors for the first year.

D. Y. A. A. & J. Ry. v. Detroit, 141 / 9.

Articles filed with secretary of state.

Seal.

Proviso.

Amount of capital stock, how divided.

When stock and shares may be increased.

Sealed certificate, where filed.

Business managed by board of directors.

(315) § 6437. SEC. 4. Said articles of association may be filed in the office of the secretary of state; and thereupon all persons who have subscribed the same, and all persons who shall from time to time become stockholders in such company, shall be a body politic and corporate, by the name specified in such articles, and by such name shall be capable of suing and being sued in any court of this state, and may have a common seal, and may alter and change the same at pleasure. A copy of any articles of association, filed in pursuance of this act, and certified by the secretary of state to be a true copy thereof, and of the whole of such articles of association, shall be in all courts and places, presumptive evidence of the incorporation of such company, and of the facts therein stated: Provided, That such articles shall not be filed in the office of the secretary of state, as aforesaid, until stock to the amount of twenty-five thousand dollars has been subscribed thereto, nor until twenty-five per cent of the amount of the stock subscribed, as aforesaid, shall have been actually paid in cash, to the directors named in such articles, nor until there is annexed thereto an affidavit, made by at least three of the directors named in said articles, that the amount of stock required by this section, to-wit, twenty-five thousand dollars has been subscribed, and that twenty-five per cent on the amount has been actually paid in.

(316) § 6438. SEC. 5. The amount of the capital stock in every such corporation shall be fixed and limited by the stockholders in their articles of association, and shall in no case be less than ten thousand dollars, and shall be divided into shares of one hundred dollars each; but the capital stock and the number of the shares thereof, may be increased at any lawful meeting of the stockholders; and whenever any such increase shall be made, a certificate showing the amount of such increase, signed by the president and the secretary of the company, and sealed with its corporate seal, shall be filed in the office of the secretary of state.

(317) § 6439. SEC. 6. The business and property of such company shall be managed and directed by a board of not less than three nor more than thirteen directors, who,

after the first year, shall be elected annually, or once in two years, as the by-laws of said company shall direct, and at such time and place as said by-laws may direct; and public notice shall be given of the time and place of holding such election, not less than twenty days previous thereto, in such manner as the by-laws of such company may direct; the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. In all elections each stockholder shall be entitled to cast as many votes as he shall own shares of stock, and the persons having the greatest number of votes shall be directors. Whenever any vacancy shall happen in the board of directors such vacancy shall be filled for the remainder of their term by the remaining directors. The directors shall hold their offices for one or two years, as said by-laws may direct, and until others are elected in their places; and no person shall be a director unless he is a stockholder in said company; and no stockholder shall vote at any election who has not paid all assessments then due on the stock held by him.

When elected,
notice, etc.

Who entitled
to vote.

Vacancy,
how filled.

Term of
office.

Am. 1901, Act 79.

(318) § 6440. SEC. 7. In case it shall happen that an election for directors shall not be held as provided, the said corporation shall not be, for that reason, dissolved, but such election shall be held on some future day, to be fixed by the directors holding over, upon giving the notice thereof, as in this act provided; and all acts of the directors shall be binding upon such corporation.

In case an
election is
not held.

(319) § 6441. SEC. 8. A majority of the directors shall be a board for the transaction of business, and the acts of a majority of the board shall bind the corporation.

Majority of
directors
quorum.

(320) § 6442. SEC. 9. The directors shall choose, by ballot, a president, who shall be one of the directors, and they shall also choose a secretary and treasurer, who shall hold their offices during such time as the by-laws of the company shall prescribe, and until others are chosen in their stead; and the directors shall supply any vacancy in the office of president, secretary or treasurer whenever the same shall occur.

Election of
officers.

(321) § 6443. SEC. 10. The president and directors shall have power to make and prescribe such by-laws, rules and regulations respecting the transfer of stocks, and the management and control of the property and affairs of such corporation, the time and manner of calling and holding the meetings of the stockholders and directors, the time for the election of directors and officers, and the terms for which they shall hold their respective offices, as they may deem best, not inconsistent with the laws of the United States or of this state, and shall have power to appoint and employ officers, clerks, agents and servants for conducting and carry-

Power of presi-
dent and
directors.

ing on the business of such corporation, and determine their duties and salaries, and wages to be paid to them.

Applicability of the ten-hour law of 1885 (act 137) to street railway employes, see *Bartlett v. St. Ry. Co. of Grand Rapids*, 82 / 658.

Payment of
subscribed
stock.

Non-payment
of installments
cause for for-
feiture.

(322) § 6444. SEC. 11. The directors may require the subscribers to the capital stock of the company to pay the amount by them respectively subscribed, in such manner and in such installments as they may deem proper. If any stockholder shall neglect to pay any installment as required by a resolution of the board of directors, the said board shall be authorized to sue for the same, or declare his stock and all previous payments thereon forfeited for the use of the company; but they shall not declare it so forfeited until they shall have caused a notice, in writing, to be served on him personally, or by depositing the same in the postoffice, properly directed to him at the postoffice nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in said notice, and that if he fails to make the same, his stock and all previous payments thereon will be forfeited for the use of the company, which notice shall be served as aforesaid, at least sixty days previous to the day on which such payment is required to be made.

Shares,
personal
property.

Subscriptions
received.

Certificates
of shares
issued.

(323) § 6445. SEC. 12. The shares in the capital stock of any corporation formed under this act shall be deemed personal property, and may be transferred as shall be prescribed by the by-laws of said company. The directors of any such company may from time to time receive subscriptions to stock in said company, until the whole amount of the stock of the association shall be subscribed; but no certificates of shares in any such company shall be issued until the whole amount of the shares mentioned in such certificate shall have been paid in full to the company.

How road
may be
constructed,
etc.

(324) § 6446. SEC. 13. Any street railway corporation organized under the provisions of this act, may, with the consent of the corporate authorities of any city or village, given in and by an ordinance or ordinances duly enacted for that purpose, and under such rules, regulations and conditions as in and by such ordinance or ordinances shall be prescribed, construct, use, maintain and own a street railway for the transportation of passengers in and upon the lines of such streets and ways, in said city or village, as shall be designated and granted from time to time for that purpose, in the ordinance or ordinances granting such consent; but no such railway company shall construct any railway in the streets of any city or village until the company shall have accepted in writing the terms and conditions upon which they are permitted to use said streets; and any such company may extend, construct, use and maintain their road in and along streets or highways of any township adjacent to said city

Company to
first accept
terms, etc.,
in writing.

or village, upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement, and the acceptance by the company of the terms thereof, shall be recorded by the township clerk in the records of his township. Any company organized under the provisions of this act may construct, use, maintain and own a street railway for the transportation of passengers in and along the streets and highways of any township upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement, and the acceptance by the company of the terms thereof, shall be recorded by the township clerk in the records of the township; and any such company may construct, use, maintain and own a street railway upon private rights of way and all such companies shall, when necessary to enter upon and use private property in such construction and operation, have the same power and right of eminent domain as is now possessed by railroad companies. All proceedings at law or in equity necessary to give this section effect shall be the same as proceedings for the condemnation of property for companies organized under the general railroad law and all statutes relative to the exercise of the right of eminent domain for railroad purposes are hereby made applicable to proceedings under this act: Provided, That any such company may construct, use, maintain and own a street railway as is herein provided along any highway heretofore laid out or constructed or hereafter to be laid out or constructed by the board of county road commissioners or any highway adopted as a county road by the board of county road commissioners and under their control, upon such terms and conditions as may be agreed upon by the company and the said board of county road commissioners, with the approval of a majority of the board of supervisors, which agreement, and the acceptance by the company of the terms thereof, shall be recorded by the county clerk in the records of said board. Excepting, however, that whenever the right of way for such railways is acquired by the exercise of the power and right of eminent domain, the person, association or corporation acquiring the same under and by virtue of such power and right, shall not thereby acquire any right, title or interest in and to any ores or minerals either upon or beneath the surface of such part of the right of way, but the same shall remain the property of the owners of the land or ores and minerals at the time the right of way is so acquired. And said owners may, without let or hindrance, mine, take and carry away all such ores and minerals, and in doing so the said owners shall not be required to protect the surface of such right of way from being damaged or endangered by the removal of such ores and minerals.

Acceptance,
where re-
corded.

Terms under
which com-
pany may
operate.

Right of
eminent
domain.

Condemna-
tion pro-
ceedings.

Proviso as
to agreement
between com-
pany and
county road
commissioners.

Company not
to acquire
title to ores
or minerals.

Owners may
mine all ores
and minerals.

Act No. 133 of 1905 supersedes Act No. 101 of the same session, which attempts to amend the same section.—*D. U. Ry. Co. v. Barnes Paper Co.*, 172/586, overruling *D. U. Ry. Co. v. Barnes Paper Co.*, 149/675.

People v. St. Ry. Co., 116/132; *Morley v. Judge*, 117/246. Power to locate street railways in highways.—*Silsby v. Lyle*, 117/327; *Electric Ry. Co. v. Grand Rapids*, 84/257; *Telephone Co. v. Benton Harbor*, 121/516; *Dencen v. St. Railway Co.*, 150/239. The authority to exercise the power of eminent domain, conferred by the amendatory act of 1905 is valid.—*D. U. Ry. Co. v. Barnes Paper Co.*, 172/586.

CHARTER POWERS: *Taylor v. Bay City St. Ry. Co.*, 80/77. Whether a corporation is exercising a franchise or right within legislative authority is a question to be inquired into by the state.—*Potter v. Saginaw U. St. Ry.*, 83/297; *Detroit City Ry. v. Mills*, 85/634; *Nichols v. Railway Co.*, 87/361.

LOCAL TAXATION: See *Detroit Citizens' Street Railway Co. v. Common Council of Detroit*, 125/673; *United Ry. v. State Tax Commissioners*, 136/96.

QUO WARRANTO: Where the application of the attorney general for leave to file an information in the nature of a quo warranto presents a matter of mere local interest and the municipality and the people concerned seem contented, there is not a case of such public interest as to justify the interference of the state.—*Att'y Gen'l v. Detroit Suburban Ry. Co.*, 96/65.

RIGHTS GRANTED BY ORDINANCE: *Det. City Ry. Co. v. Mills*, 85/634; *People v. Railway Co.*, 92/522; *Dean v. Railway Co.*, 93/330; *Detroit v. Railway Co.*, 90/646. The right of a municipality, under the statute, to refuse its consent to the operation of a street railway in its streets is an absolute one, and its power, in the first instance, to impose conditions, is unlimited.—*Detroit v. Railway Co.*, 95/460. Forfeiture of franchise for breach of condition.—*Union St. Ry. Co. v. Judge*, 113/694. A municipality cannot grant a street railway company exclusive rights in a street, unless authority to do so has been expressly granted or arises by clear implication.—*Railway Co. v. Detroit*, 110/384. A municipality has no power, except as derived from the legislature, to grant to a street railway company an easement in its street.—*Id.* Street railway companies are bound by their agreements with municipalities.—*Kissane v. Detroit, etc., Ry.*, 121/179; *Twp. of Grosse Pointe v. Railway Co.*, 130/363. A right conferred upon a street railway company to extend its line through the township, to connect with another line, within a stated time, constitutes a franchise, after acceptance, which cannot be revoked.—*Township of Hamtramck v. Rapid Railway Co.*, 122/472. A wilful disregard by the company of the conditions of such a franchise would entitle the township to maintain a bill to forfeit the franchise.—*Id.* The right to maintain and operate a street railway in the public streets is an interest in land.—*Detroit, etc., Street Ry. Co. v. Detroit*, 124/449. Mandamus is the proper remedy to compel a street railway company to comply with the conditions of its franchise.—*Twp. of Grosse Pointe v. Detroit, etc., Ry. Co.*, 130/363. A company which purchases a street railway property takes the road subject to all the obligations resting upon its grantor.—*Id.* And the company which sells all its property to another company cannot be compelled to comply with the conditions of the franchise.—*Id.* The overseer of highways is not given the power to determine the location in a highway of the tracks of a street railway company, but the township board.—*Freud v. Detroit, etc., Ry. Co.*, 133/421 (*Carpenter, J.*). An ordinance authorizing a company to put in "such turnouts, switches and sidetracks as may be deemed necessary," does not authorize the construction of a "Y" switch to make a turning point for another company.—*Railway Co., v. Mt. Clemens*, 118/133. Authority to lay tracks and erect trolley poles implies authority to remove obstructions, including shade trees, without compensation to owner, when necessary; but the owner must be given notice and opportunity, to remove them.—*Miller v. Railway Co.*, 125/171. Regulations as to fares, contained in municipal ordinances.—*Coy v. Railway*, 125/616. An ordinance authorizing a company "to construct, use and operate all necessary and convenient tracks for turnouts," etc., wherever necessary does not limit the company to such as were necessary at the time the track was laid, but such as future necessities require.—*Railway Co. v. Board of Public Works*, 126/554. The right of a street railway company to construct its road and of a city to grant the use of its streets therefor, are both dependent on legislative authority.—*Traction Co. v. Com'r of Railroads*, 128/164. Construction of ordinance provisions relative to street crossings.—*Dearborn Village v. Railway Co.*, 131/19. Relative to repaving or repairing pavements.—*Detroit v. United Railway*, 133/608. Right of street railway, under its franchise, to construct a trestle at a crossing.—*Lane v. Mich. Traction Co.*, 135/70. Right to make a convenient and necessary connection with a branch line.—*Street Ry. Co. v. Com. Council of Laurium*, 135/614. Construction of ordinance requiring paving between rails.—*Detroit v. Railway*, 134/11. Depth of cuts, elevation, method of construction, barriers, etc.—*Kaiser v. D. & N. W. Ry. Co.*, 136/541. The state has control over state and territorial roads, within townships; and this section includes such roads, and provides for the construction of railways along them.—*Smith, highway com'r v. Traction Co.*, 137/21. The highway commissioner has nothing to do with the granting of the franchise.—*Id.* Rights of company in street.—*Dean v. A. A. R. Co.*, 137/459. The franchise granted is to be construed with reference to the power of the legis-

lature to extend the limits of the municipality and construing it strictly against the grantee.—*City of Detroit v. D. U. Ry.*, 173/314.

REQUIREMENTS OF CITY: May require a company to cut off as much of its ties as extends beyond the stringers on which they rest.—*Detroit v. Railway Co.*, 90/646. As to the enforcement of paving between the rails.—*Benton Harbor v. Railway Co.*, 102/386. The power to impose conditions, in the first instance, is unlimited. Respecting the imposition of further conditions after consent is given, it is only necessary that the municipality keep within the scope of the reservation.—*Detroit v. Railway Co.*, 95/460. And where the ordinance, under which the company acquires its rights in the streets, requires the company to pave within its tracks, the company is bound, on a change of the material used in paving, on request of the city authorities, to pave with the new material adopted.—*Lansing v. Railway Co.*, 109/123. Requirements as to grading street.—*Twsp. of Springwells v. Railway Co.*, 122/486. Requirement as to lighting cars.—*Ensley v. United Railway*, 134/195. City may pass ordinance requiring a company to use reasonable safeguards against danger.—*People v. Railway*, 134/682. Municipality may supervise construction, etc.—*Mannell v. Railway*, 139/106.

DAMAGE TO ABUTTING OWNERS: A street railway track may be lawfully authorized in a city street without compensating adjacent owners; but a railroad cannot.—*G. R. & I. R. Co. v. Heisel*, 38/62. It is within the power of the legislature to provide that street railway corporations shall pay to owners of abutting property, in front of which they construct their roads, the damages caused by such construction.—*Taylor v. St. Ry. Co.*, 80/77. See also, *Barber v. Saginaw U. St. Ry. Co.*, 83/299; *Potter v. Saginaw U. St. Ry. Co.*, 83/285; *Detroit City Ry. Co. v. Mills*, 85/634; *Nichols v. A. A. & Y. St. Ry. Co.*, 87/361; *Taylor v. City St. Ry. Co.*, 101/140. When abutting owner estopped from claiming damages.—*Ilgenfritz v. T. & M. Ry.*, 136/634.

NO ADDITIONAL SERVITUDE: The use of a street by an ordinary street railway is not in and of itself an additional servitude.—*People v. Railway Co.*, 92/524; *Det. City Ry. v. Mills*, 85/643; *G. R. & I. R. Co. v. Heisel*, 38/62; *Grand Rapids St. Ry. Co. v. Railway Co.*, 48/433.

INJUNCTION: *Plank Road Co. v. Railway Co.*, 97/583; *Plank Road Co. v. Railway Co.*, 131/663; *Austin v. D., Y. & A. A. Ry.*, 134/149; *Mannell v. Railway*, 139/106.

FRAUD: Option for purchase of land secured by fraud and misrepresentation.—*G. R., G. H. & M. Ry. Co. v. Stevens*, 143/646.

(325) § 6447. SEC. 14. After any city, village or township shall have consented, as in this act provided, to the construction and maintenance of any street railways therein, or granted any rights and privileges to any such company, and such consent and grant have been accepted by the company, such township, city or village shall not revoke such consent, nor deprive the company of the rights and privileges so conferred.

Accepted grants of rights cannot be revoked.

Railway Co. v. Grand Rapids Com. Council, 84/257; *Citizens' St. Ry. Co. v. Detroit*, 124/453.

(326) § 6448. SEC. 15. Any street railway company may also purchase or acquire, either at public or private sale, whether judicial or otherwise; or may hire any street railway in any city, village or township owned by any other corporation or company, together with all the real and personal estate belonging thereto, and the rights, privileges and franchises thereof, and may use, maintain, and complete such road, and may use and enjoy the rights, privileges and franchises of such company in the same manner and upon the same terms as the company whose road and franchises, so acquired, might have done; or may lease, sell and convey its railway, together with the rights, privileges and franchises thereof to any other street railway company subject to such terms and limitations as may be expressed in this act. Every street railway company may also purchase, hold, own, or

Purchase or lease of other roads.

Purchase of real estate, etc.

take upon lease such real estate, barns, stables, buildings, fixtures and property as may be necessary for the use and business of their road; and the whole or any part thereof, together with their railway fixtures, property and appurtenances, rights, privileges and franchises may sell, lease, dispose of, pledge or mortgage whenever the corporation shall deem it expedient so to do: Provided, however, That no company shall, under the provisions hereof, lease, purchase or acquire a competing road.

Proviso.

Am. 1905, Act 97.

Rights of execution purchasers of the franchise of the company.—McKee v. St. Railway Co., 41 / 274. See Grand Rapids St. Rys., 48 / 436-7; Citizens' St. Ry. Co. v. Detroit, 124 / 453; Citizens' St. Ry. Co. v. Common Council, 125 / 703; Grosse Pointe Twp. v. Detroit, etc., Ry., 130 / 365; People v. D. U. Ry. Co., 152 / 359.

May borrow money and issue bonds and mortgage property.

(327) § 6449. SEC. 16. Every street railway company may borrow money and issue their bonds therefor, and for any indebtedness incurred may mortgage their corporate property and franchises, and any property which they shall at any time acquire, to secure the payment of their bonds, money borrowed, and any and all debts and liabilities which they may at any time incur.

Street Railway Co. v. Detroit, 124 / 453; Street Railway Co. v. Common Council, 125 / 682.

Conform to established grade.

(328) § 6450. SEC. 17. In constructing their railways, every such company shall conform to the grades established, or which may be established, by the common council or other corporate authorities of the city, village or township, for the street traversed by said railways, nor shall the company at any time alter or change the grade or line of any street, without the consent of the common council or other corporate authorities of the city, village or township, first had and obtained.

Not to change grade without consent.

Manner of laying track.

(329) § 6451. SEC. 18. Every street railway company is hereby required to lay the track of their road or railway in such way or mode and with such kind of rail, and to keep their railway and that part of the street and pavement within and adjacent to the track of such road or railway, in such condition and state of repair as shall be prescribed and provided in the consent, grant or agreement of the municipal authorities permitting the construction and location of such road or railway.

City or village authorities establish rules concerning grade, etc.

(330) § 6452. SEC. 19. The common council or other corporate authorities of the city or village in which any street railway shall be located, may from time to time, by ordinance or otherwise, establish and prescribe such rules and regulations in regard to said railway as may be required for the grading, paving and repairing the street, and the construction of sewers, drains, reservoirs and crossings, and the laying of gas and water-pipes, upon, in and along the

streets traversed by such road, and to prevent obstructions thereon.

In the exercise of the power conferred by this statute, the council has the undoubted authority to determine what is necessary or required, and whether any particular method of construction of the railway interferes with the durability or preservation of the pavement, and to prescribe reasonable and practicable changes in the mode of construction.—*Detroit v. Railway Co.*, 90 / 655.

(331) § 6453. SEC. 20. The rates of toll or fare which any street railway company may charge for the transportation of persons or passengers over their road, shall be established by agreement between such company and the corporate authorities of the city or village where the road is located, and shall not be increased without consent of such authorities. Tolls to be agreed upon.

TOLLS: The word "toll" is used in its established common law meaning. It applies to a very large class of dues and exactions which are in the nature of fixed rights and which cannot be lawfully exceeded. They are generally, if not universally, connected with some franchise which involves duties as well as privileges of a general or public nature.—*McKee v. St. Ry. Co.*, 41 / 279. An individual who purchases the franchise may collect tolls the same as the corporation.—*Id.*

FARE: It is a passenger's duty to secure evidence of the payment of his fare, and the conductor is under no legal obligation to accept his statement of that fact.—*Mahoney v. Railway Co.*, 93 / 612. If a passenger has a valid contract for passage, but lacks the evidence thereof, he should pay his fare when demanded by the conductor and seek redress from the company.—*Id.* Ejection for non-payment.—*Rouser v. U. P. St. Ry. Co.*, 97 / 565. A passenger's right to be carried for the legal fare is not dependent upon the purchase of a ticket at the regular station.—*Coy v. Railway*, 125 / 616. Rates of fare, under municipal ordinance, over whole length of road, through other municipalities.—*Vining v. Railway*, 133 / 539.

TICKETS AND TRANSFERS: Regulation of price of tickets and transfers by ordinance.—*Detroit v. Railway Co.*, 95 / 456; *Rice v. Railway Co.*, 122 / 677. A fifteen minute limit on transfers is reasonable.—*Heffron v. Detroit City Ry.*, 92 / 406. As to free transfers.—*Railway Co. v. Com. Council*, 84 / 257. Failure to furnish proper transfer.—*Keen v. Electric Railway Co.*, 123 / 247.

(332) § 6455. SEC. 22. The stockholders of every company incorporated under this act, shall be jointly and severally liable, in their individual capacity, for all labor performed for such company; and shall also be liable for the debts of such company, for an amount equal to the amount of any unpaid stock in such company held by them. Liabilities of stockholders.

Kamp v. Wintermute, 107 / 635.

Section 21 was repealed by the judicature act of 1915. It provided for service of summons, declaration or other legal process. See section 454.

(333) § 6457. SEC. 24. But no suit shall be brought against any individual stockholder or stockholders, for any debt of such company, as provided in the last two preceding sections, until judgment on the demand shall have been obtained against the company, and execution thereon returned unsatisfied in whole or in part, or until the company shall have been dissolved; and any stockholder who may have paid any debt of such company, either voluntarily or by compulsion, shall have a right to sue and recover of such company the full amount thereof, with interests, costs and expenses; and any such stockholder who may have paid as aforesaid, shall have a right to bring an action against and Individuals not liable till after judgment is obtained against company.
Right of stockholder to sue company or other stockholders.

recover of the rest of the stockholders, or any one or more of them, the due proportion thereof which such stockholder or stockholders ought to pay; and if such action for contribution shall be brought against more than one stockholder, the judgment and the execution thereon shall specify the amount to be recovered and collected from each defendant.

Voight v. Dregge, 97 / 323.

Section 23 was repealed by the judicature act of 1915. It related to the payment of dividends by directors when the company is insolvent.

Annual report. (334) § 6458. SEC. 25. On or before the second Monday in January in each year, it shall be the duty of the directors of every company formed under this act, to report to the secretary of state, under the oath of at least two of such directors:

- First, The amount of capital paid in;
- Second, The amount of the indebtedness of the company;
- Third, The length of road completed;
- Fourth, Cost of construction and equipment;
- Fifth, Gross receipts and earnings of the company for the past year;
- Sixth, Cost of operating the road for the past year;
- Seventh, Amount of dividends for the past year;
- Eighth, A list of stockholders, their name and residence.

Section 26 related to taxation and was repealed by Act No. 5 of 1882.

When an incorporated body shall cease to be so.

(335) § 6459. SEC. 27. Every company incorporated under this act, for the purposes of constructing a railway, shall cease to be a body corporate, if within one year from the time of filing their articles of association with the secretary of state, they shall not have commenced the construction of their railway, and expended therein at least ten per cent of their capital stock.

Penalty for obstructing, etc.

(336) § 6460. SEC. 28. If any person shall wilfully obstruct, break, injure or destroy any railway constructed or operated under the provisions of this act, or any part thereof, or any work, cars, building or fixtures attached to or in use upon the same, belonging to or in the possession of any street railway company, such person or persons so offending, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not more than one year.

RIGHT ON TRACK: The right of the railway company in the street is only an easement to use the highway in common with the public. It has no exclusive right of travel upon its track, and it is bound to use the same care in preventing a collision as is the driver of a wagon or other vehicle.—*Rascher v. Railway Co.*, 90 / 415; *Laethem v. Railway Co.*, 100 / 300; *Ablard v. United Railway*, 139 / 248. A street car can turn neither right nor left; it runs with greater rapidity and momentum than a wagon or omnibus; therefore greater caution must be taken in its running to avoid collision. It ought to be lighted in the night time. Street cars necessarily have precedence in the portion of the way designated for their use, but this superior right must be exercised with proper precaution.—*Id.* 416. The primary purpose of the track is not travel by the general public, but use by the company, and a person driving upon it must be deemed to have assumed the ordinary risks attending such use.—*Kornetzski v. Detroit City Ry.*, 94 / 343. But the company has no right to run down a vehicle on its track.—

Laethem v. Railway Co., 100 / 297; King v. Grand Rapids Ry. Co., 176 / 645. Operation of cars.—Brown v. D. U. Ry., 179 / 404.

PRECAUTIONS BEFORE CROSSING: The duty of looking and listening before crossing a street railway track, is the same as in case of a railroad track.—McGee v. Railway Co., 102 / 107; Fritz v. Railway Co., 105 / 50; Blakeslee v. Railway Co., 105 / 462.

(337) § 6461. SEC. 29. All companies and corporations heretofore organized in this state for the purpose of building and operating street railways under the statutes then in force, shall have the same powers, rights, protection and privileges, and shall be subject to all the liabilities as are hereby provided for companies and corporations organized under the provisions of this act. Powers of companies heretofore organized.

(338) § 6462. SEC. 30. All companies and corporations hereafter formed for the purpose of constructing, owning or using any street railway for the transportation of persons and passengers, in any city or village, shall be organized under the provisions of this act, and shall be subject to the provisions of chapter seventy-three, of the compiled laws of this state, and to all other general laws of this state, relating to corporations, so far as the same may be applicable to corporations formed under this act, and the legislature may alter and amend, or repeal this act at any time. Powers and liabilities of companies.

On the several topics noted under this section, see notes to section 227 ante.

CARE OF PASSENGERS: Must provide safe vehicles and not allow passengers to ride in unsafe places.—E. Sag. R. Co. v. Bohn, 27 / 503. And exercise reasonable care to stop the car at a safe place.—Fuller v. D. U. Ry. Co., 176 / 135. Must keep cars in good repair and fit for use.—Wormsdorf v. Railway Co., 75 / 472. Clearing track of ice and snow.—Bowen v. Railway Co., 54 / 496; Wallace v. Railway Co., 58 / 231; Wingert v. D. U. Ry., 177 / 199. Must furnish safe horses.—Noble v. Railway Co., 98 / 249. The city is not an insurer of street car passengers against defects in the street car system.—Kennedy v. Lansing, 99 / 518. Responsibility for injury of passenger on "switch-back" railway.—Knottnerus v. Railway Co., 93 / 348.

CONTRIBUTORY NEGLIGENCE: Downie v. Hendrie, 46 / 498; Brown v. Railway Co., 49 / 153; Wood v. Railway Co., 52 / 402; Joslin v. Coal and Ice Co., 53 / 322; Cornell v. Railway Co., 82 / 495; Geist v. Railway Co., 91 / 446. Riding on platform.—Upham v. Railway Co., 85 / 12; Archer v. Railway Co., 87 / 101; McCahill v. Railway Co., 96 / 156; Noble v. Railway Co., 98 / 249. Alighting from moving car.—Ashton v. Railway Co., 78 / 587; Finn v. Railway Co., 86 / 74; Werbowsky v. Ry. Co., 86 / 236; Britton v. Railway Co., 90 / 159; Kirchner v. Railway Co., 91 / 400; Lacas v. Railway Co., 92 / 412; Bradley v. Railway Co., 94 / 35; McCahill v. Railway Co., 96 / 156; Noble v. Railway Co., 98 / 249; Gardner v. Railway Co., 99 / 182. As to landing place.—Poole v. Railway Co., 100 / 379; Fuller v. D. U. Ry. Co., 176 / 135.

NEGLECT: Obstructing the street.—Cowan v. Muskegon Ry. Co., 84 / 583; Zanger v. Detroit Ry. Co., 87 / 646; Bleil v. Railway Co., 98 / 228; Noble v. Railway Co., 98 / 249. At railroad crossing.—Richmond v. Railway Co., 87 / 374. Questions of evidence: admission of.—Wormsdorf v. Railway Co., 75 / 472. Relative to injuries.—Ashton v. Railway Co., 78 / 587; Laughlin v. Railway Co., 80 / 154; Lacas v. Railway Co., 92 / 412. Liability for personal injuries.—Joslin v. G. R. & I. & C. Co., 53 / 322. Extent of damages.—Hurst v. Railway Co., 84 / 539; Tunnicliffe v. Railway Co., 107 / 261. Directing verdict.—Little v. Railway Co., 78 / 205. In the middle of a block with nothing to indicate the probability of any accident, it is not the duty of the motorman to sound his gong continuously.—Champaign v. D. U. Ry., 181 / 672.

(339) § 6463. SEC. 31. At all crossings of the tracks of two street railways, when a car on each road approaches such crossing at substantially the same time, the car on the track first laid shall have precedence and be entitled to the right of way: Provided, No car shall be stopped on such crossing. Which car to have precedence. Proviso.

The original section 31 was a mere immediate effect section. Act No. 222 of 1889 added two sections to stand as sections 31 and 32. Section 31, as added by that act, read as follows: "Sec. 31. Elevated railway companies may be organized under the provisions of this act."

Act No. 24 of 1891 amended section 31, "as amended by act number one hundred and thirty-one, so as to read as follows:" Then followed section 31, as above. This seems to have entirely displaced the section 31 of 1889.

The fact that the company operating the older of two intersecting lines is given precedence will not warrant it in ignoring an ordinance requiring all cars to come to a full stop at crossings, and it does not have the right of way until it has stopped its car in compliance therewith.—Becker v. Street Ry. Co., 121 / 580.

To stop cars
before cross-
ing railroad
tracks.

Penalty,

Proviso.
permit.

(340) § 6464. SEC. 32. Street railway companies shall require the drivers of street cars to bring such cars to a full stop before going upon a street railway crossing or the tracks of a steam railroad, and to make sure that no engine or cars are approaching such crossing before he proceeds to go upon the same. If the driver of any street car shall neglect to bring such car to a stop, as hereinbefore provided, he shall for every such neglect be liable to a fine of twenty-five dollars: Provided, That whenever there shall be adopted and used at any such crossing, an interlocking switch and signal system, or other device or regulation, which in the judgment of the Michigan railroad commission will render it safe to permit cars and trains to pass over such crossing without being brought to a stop, as above provided, said Michigan railroad commission may, by written order, a copy of which shall be filed and retained in its office, give permission for cars and trains to pass, under such regulation as to rate of speed and in other respects as it may deem proper, which order, however, said commission may at any time modify or revoke.

Am. 1913, Act 382.

This section, as it stood prior to the amendment, was the section 32 added by the act of 1889. See note to preceding section. Sec. 33 seems to have been skipped in numbering.

Richmond v. Railway Co., 87 / 399; Vreeland v. C. S. & M. R. Co., 109 / 588.

What corpora-
tions may do
suburban ex-
press business.

Proviso.

(341) § 6465. SEC. 34. Corporations organized under this act may do a suburban express business and may carry farm produce, garden truck, milk, merchandise and other light freight: Provided, That no cars for the conduct of any such business shall be operated on any street railway within the limits of any incorporated city or village in the day time, between eight o'clock in the morning and eight o'clock in the evening, without the consent of the municipal authorities, and under such rules and regulations as they may prescribe.

As to the effect of the addition of these three sections—34, 35 and 36—see Jackson, etc., Traction Co. v. R. R. Com'r, 128 / 167.

Subject to
control of
railroad com-
mission.

(342) § 6466. SEC. 35. All street railway corporations organized or doing business under this act shall be subject to the supervisory control of the commissioner of railroads (railroad commission) as provided by act number one hundred and seventy-one of the public acts of eighteen hundred

and ninety-three, and the commissioner of railroads (rail-road commission) shall also have power to make from time to time reasonable rules and regulations for the operation of the street railways of such corporations in the conduct of the suburban express business they are authorized to carry on by this act as amended.

(343) § 6467. SEC. 36. That every person who places ^{Obstruction to street railway.} upon any street railway any timber, stone, iron or any other obstruction or who shall loosen or displace any rail of the track of such railway or shall break down or displace, destroy or injure any bridge, culvert or embankment of any such street railway or do any other act with intent to endanger the safety of any person traveling or being upon such street railway or to throw from such street railway any motor car, trailer car or car moving along the track of such street railway on which shall be any person injured thereby shall be punished by imprisonment in the state prison for life ^{Penalty for.} or for a term of years.

SECTION V.—TEMPORARY HIGHWAYS FOR LOGGING RAILROADS.

[Extract from Act 283, P. A. 1909.]

CHAPTER IX.

(344) SEC. 7. Whenever any owner of any timbered land, ^{Temporary highways.} not less than forty acres, shall wish to have a temporary highway laid out, over which a logging railroad may be operated on conditions hereinafter stated, he may in writing make application to the commissioner of highways of the proper township for that purpose, who shall proceed to empanel a jury, or submit the matter to commissioners if the parties in interest so desire, and the proceedings shall be substantially the same as provided in this chapter for opening private roads.

Am. 1913, Act 335.

(345) SEC. 8. When any such application shall be made, ^{Application.} the commissioner of highways of the township in which said road is to be located, shall give notice in writing to the owner and occupant of the land in substantially the same manner as provided in section one of this act for the purpose of aiding in the striking of a jury to determine as to the necessity of such road and to appraise the damages, or the parties in interest may agree upon three or more persons as commissioners to act in place of a jury to determine such necessity and appraise such damages. If it shall be deter-

Proviso,
logging rail-
road.

mined that said temporary highway is necessary for the purpose of removing the timber from such lands, the jury or commissioners shall certify under their hands such determination and also their appraisal of the damages, and shall determine the length of time that such highway shall be necessary; and at the expiration of such time said highway shall cease, and the commissioner shall lay out the road in accordance with said determination, describing the same particularly, and shall cause a record thereof to be made in the clerk's office: Provided, That no logging railroad shall be operated upon or along any such temporary highways, except that during the fifteen years after the passage of this amendment permission may be given by the commissioner of highways to construct and operate such logging railroad, but such railroad shall not be operated or maintained after fifteen years from the passage of this amendment.

Am. Id.

Consent of
owner, etc.

To be private
highways.

Damages.

(346) SEC. 9. No such highway or logging railroad shall be laid out along and upon and so as to occupy any road made or caused to be made by the owner of any land or by any person with the consent of such owner and used by the person or persons who made the same, unless such owner shall consent thereto in writing. Such temporary highways shall be private highways, and all the expenses of their laying out, which expenses shall include the compensation due the highway commissioner, the jury or commissioners acting as such, for such services, and all damages that may be awarded on account of the taking of lands therefor, shall be paid to the commissioner by the persons applying for the same, and upon such payment they may enter upon, open and work such highways at their own and sole expense, but no trees shall be cut therein except as shall be necessary to make a track or tracks.

Am. Id.

SECTION VI.—CONSOLIDATION OF STREET RAILWAY COMPANIES WITH OTHERS.

An Act to authorize the consolidation of street railway and electric light companies.

[Act 197, P. A. 1891.]

The People of the State of Michigan enact:

Consolidation
authorized.

(347) § 6468. SECTION 1. Any company organized under chapter ninety-five of Howell's annotated statutes of Michigan, entitled "Street Railway Companies," may consolidate with any company now organized or existing under and by virtue of the laws of this state, for the production and

supplying of electricity for lighting, fuel or other purposes, including as one such company any such company that may have resulted from consolidation heretofore had where such companies are located and carry on business in the same or adjoining or adjacent towns, cities or villages, town, city or village, and may form a single corporation. And for this purpose the directors of said two corporations may enter into an agreement under the corporate seal of each, for the consolidation of the said two corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of directors thereof, and the names of those who shall be the first directors, which shall be deemed and taken to be the first election of the directors of the consolidated company, which number shall not be less than three, nor more than thirteen, the time and place of holding the first election of directors after the consolidation, which time shall not exceed six months after such consolidation has been sanctioned by the stockholders of said two corporations, as hereinafter provided, the number of shares of the capital stock in the new corporation; the amount of each share, which shall not exceed one hundred dollars per share; also, whether the shares of the consolidated company shall be all of one class or shall consist of preferred and common stock, and if more than one class, the shares of each class of stock; also, whether the dividends upon such preferred stock, if any, shall be cumulative or non-cumulative, and whether or not such preferred stock shall be subject to redemption, and at what price not less than par, and in what other respects, if any, such preferred stock shall be entitled to priority over the common stock; the manner of converting the shares of capital stock in each of said two corporations into shares in such new corporation with such other details as they shall deem necessary to perfect such consolidation of said corporations; and such new corporation shall possess all the powers, rights and franchises conferred upon such two corporations, and shall be subject to all the restrictions, and perform all the duties imposed by the provisions of their respective charters, or laws of organization, not inconsistent with the provisions of this act. Such agreement of the directors shall not be deemed to be the agreement of the said two corporations until after the written consent of all the stockholders of each of said corporations has been obtained thereto: Provided, however, That where such companies are located and carry on business in the same or adjoining or adjacent towns, cities or villages in the northern peninsula of this state, such agreement shall be deemed to be the agreement of the said two corporations after the written consent of stockholders holding and owning three-fourths of the outstanding capital stock of each of said corporations, has been obtained thereto, or in lieu of such

How effected.

Powers and duties of new corporation, etc.

Agreement, when valid.

Proviso, in U. P.

Certified copy
to be evi-
dence, etc.

written consent, such agreement shall have been approved by a vote of not less than three-fourths of the outstanding capital stock of each of said corporations, at any annual or special meeting of the stockholders of said corporations. And when such agreement of the directors has been so sanctioned by the stockholders, in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said two corporations. A copy of said contract or consolidation agreement filed in pursuance of this act with the secretary of state, and certified by him to be a copy, shall in all courts and places be presumptive evidence of the consolidation of said two companies, and of all the facts therein stated.

Am. 1907, Act 305.

When con-
solidation ef-
fected, etc.

(348) § 6469. SEC: 2. Upon making the agreement mentioned in the preceding section, in the manner required therein, and filing a duplicate thereof in the office of the secretary of state, the said two corporations mentioned or referred to in this section shall be merged into the new corporation provided for in such agreement, to be known by the corporate name therein mentioned, and the details of such agreement shall be carried into effect as provided therein. And all and singular, the rights and franchises of each and all of said two corporations, parties to such agreement, and all and singular, their rights and interests in and to every species of property and things in action, shall be deemed to be transferred to and vested in such new corporation, without any other deed or transfer, and such new corporation shall hold and enjoy the same, together with all other rights of property, in the same manner and to the same intent, as if the said two corporations, parties to such agreement, should have continued to retain the title and transact the business of such corporation; and the titles and the real estate acquired by either of said two corporations shall not be deemed to revert or be impaired by means of anything in this act contained: Provided, That all rights of creditors and all other liens upon the property of either of said corporations parties to the said agreement, shall be and hereby are preserved unimpaired, and the respective corporations shall continue to exist so far as may be necessary to enforce the same: And provided further, That all the debts, liabilities and duties of either company shall thenceforth attach to such new corporation, and be enforced against the same, to the same extent, and in the same manner as if such debts, liabilities and duties had been originally incurred by it.

Proviso.

Further
proviso.

An Act to authorize the consolidation of street railway, electric light and gas light companies, or any two thereof.

[Act 128, P. A. 1899.]

The People of the State of Michigan enact:

(349) SECTION 1. Any company organized under chapter ninety-five of Howell's annotated statutes of Michigan, Companies may consolidate. entitled "Street Railway Companies" and any company organized under chapter one hundred twenty-seven of said statutes, entitled "Electric Light Companies" and any company organized under chapter one hundred twenty-six of said statutes, entitled "Gas Light Companies" or any two thereof, may consolidate, each with the others, where such companies are organized, in operation and located, and carry on business in the same towns, cities or villages, and may form a single corporation. And for this purpose the directors of said three corporations, or any two of said corporations, may Directors may enter into agreement. enter into an agreement under the corporate seal of each, for the consolidation of the said three corporations, or any two thereof, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of directors thereof, and the names of those who shall be the first directors, which shall be What deemed first election. deemed and taken to be the first election of the directors of the consolidated company, which number shall not be less than three nor more than seven, the time and place of holding the first election of directors after the consolidation, which time shall not exceed six months after such consolidation has been sanctioned by the stockholders of said three corporations, or any two thereof, so consolidating, as hereinafter provided, the number of shares of capital stock in the new corporation, the amount of each share, the manner of converting the shares of capital stock in each of said three corporations, or any two thereof, into shares in such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations, and such new corporation shall possess all the powers, rights Powers of new corporation. and franchises conferred upon such three corporations, or any two thereof, so consolidated, and shall be subject to all the restrictions, and perform all of the duties imposed by the provisions of their respective charters or laws or organization not inconsistent with the provisions of this act. Such Agreement, how approved. agreement of the directors shall not be deemed to be the agreement of the said three corporations, or any two thereof, so consolidating, until approved by a vote of three-fourths of the outstanding stock of each company passed at an annual meeting of stockholders or at a special meeting of stockholders called for the purpose of considering the same, and

Copy of,
what to
show.

when such agreement of the directors has been so sanctioned by the stockholders, in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said three corporations, or any two thereof, so consolidating. A copy of said contract or consolidation agreement filed in pursuance of this act with the secretary of state, and certified by him to be a copy, shall in all courts and places be presumptive evidence of the consolidation of said three companies, or any two thereof, so consolidating, and of all the facts therein stated.

Am. 1903, Act 50.

When new
corporation
formed.

Rights, etc.,
transferred.

Proviso,
liens, etc.

Further
proviso,
debts, etc.

Further
proviso,
where
to apply.

(350) SEC. 2. Upon making the agreement mentioned in the preceding section, in the manner required therein, and filing a duplicate thereof in the office of the secretary of state, the said three corporations or any two thereof, mentioned or referred to in this section, shall be merged into the new corporation provided for in such agreement, to be known by the corporate name therein mentioned, and the details of such agreement shall be carried into effect as provided therein. And all and singular the rights and franchises of each and all of said three corporations, or any two thereof, so consolidating, parties to such agreement, and all and singular their rights and interest in and to every species of property and things in action, shall be deemed to be transferred to and vested in such new corporation, without any other deed or transfer, and such new corporation shall hold and enjoy the same, together with all other rights of property, in the same manner and to the same intent, as if the said three corporations, or any two thereof so consolidating, parties to such agreement, should have continued to retain the title and transact the business of such corporation; and the titles and the real estate acquired by any of the said three corporations, or any two thereof so consolidating, shall not be deemed to revert or be impaired by means of anything in this act contained: Provided, That all rights of creditors and all other liens upon the property of any of said corporation parties to the said agreement shall be and hereby are preserved unimpaired, and the respective corporations shall continue to exist so far as may be necessary to enforce the same: And provided further, That all the debts, liabilities and duties of any or all of said companies shall thenceforth attach to such new corporation, and be enforced against the same, to the same extent and in the same manner as if such debts, liabilities and duties had been originally incurred by it: And provided further, That the provisions of this act shall apply only to the counties of Marquette, Muskegon, Newaygo, Allegan, Jackson, Kalamazoo and Calhoun; and to street railway, electric light and gas companies in the county of Manistee, whether organized under the acts herein specified or under act number two

hundred thirty-two of the public acts of nineteen hundred three.

Am. 1903, Act 50; 1907, Act 33.

An Act to provide for the consolidation of street and electric railway companies organized under the laws of Michigan with like companies organized in adjoining states whose lines of road, constructed or in process of construction, form or will form a continuous or connecting line.

[Act 143, P. A. 1901.]

The People of the State of Michigan enact:

(351) SECTION 1. Any street or electric railway company in this state whose line of road, constructed or being constructed, forms or will form a continuous or connecting line with that of any other company or companies within, without or partly within and partly without this state, may consolidate with such other company or companies: May consolidate. Provided, That no such consolidation shall be made between companies owning competing lines. Proviso as to competing lines. The directors of said two or more corporations may enter into an agreement for the consolidation of such corporations, prescribing the terms and conditions thereof; Directors may enter into agreement. the mode of carrying same into effect; What to prescribe. the name of the new corporation; the number of directors thereof, and the names of those who shall be the first directors, which number shall not be less than three nor more than thirteen, and who shall hold until the first election; the time and place of holding the first election of the consolidated company, which time shall not exceed six months after such consolidation; the number of shares of capital stock in such new company; the amount of each share; the manner of converting the shares of capital stock in each of said two or more corporations into shares in such new corporation; and such other details as may be deemed necessary to perfect such consolidation or authorize or limit its bonded indebtedness. When deemed agreement of corporations. Such agreement shall not be deemed to be the agreement of such two or more corporations until it shall have been ratified by a majority in interest of the stockholders in each of said companies, at separate stockholders' meetings of such companies, to be called, upon a notice published at least once each week for two successive weeks, in some newspaper published in each county in this state through which said road runs, the first publication to be at least twenty days before the time specified for said meeting, said notice to be signed by the secretaries of each of said companies proposing to consolidate, and shall state the Notice of meeting for ratification, how given.

Proviso as
to signing
agreement.

Copy of rati-
fication and
vote, where
filed.

To be pre-
sumptive
evidence.

Rights,
powers,
etc.

object and purpose of such meeting: Provided however, That if all the stockholders of said company or companies organized under the laws of this state shall sign and acknowledge said agreement, no meeting and no advertising shall be necessary in this state. Upon such ratification of the agreement the same shall be deemed to be the agreement of the said two or more corporations, and the same, together with a copy of the vote of ratification by the non-resident company, as shown by its record of such vote, certified to be such copy by its president and secretary, shall be filed in the office of the secretary of state, and thereupon said consolidation shall be deemed complete. Any copy of such agreement and copy of proceedings so filed, certified by the secretary of state to be such copy, shall in all courts and places be presumptive evidence of the consolidation of said companies and of all the facts therein stated. Such consolidated company shall have all the powers, rights and privileges possessed by said company or companies organized under the laws of this state, and shall be subject to all restrictions and perform all the duties imposed upon it by law.

A consolidation of domestic street and electric railways is not authorized by this act, which applies to the consolidation of companies in adjoining states with corporations in Michigan.—*Green v. M. U. Rys. Co.*, 159 / 58. A consolidated corporation is estopped to set up the invalidity of its consolidation as against the claim of one of the constituent corporations.—*Id.*

An Act to authorize any gas light company and any consolidated company formed by the union of a street railway and electric light company, being corporations organized under the laws of this state, and having their principal place of business in the same town, village or city, to unite and consolidate with any corporation organized under the laws of an adjoining state, and which, under and by virtue of the rights, powers and franchises possessed and enjoyed by it under the laws of such adjoining state, owns and operates a street railway therein and also manufactures, produces, generates, sells and furnishes gas and electricity for heating, lighting and power purposes, where the street railway lines of the two corporations last mentioned shall form a connecting and continuous line of railway between this state and such adjoining state.

[Act 54, P. A. 1903.]

The People of the State of Michigan enact:

Certain com-
panies may
consolidate.

(352) SECTION 1. Any gas light company, and any consolidated company formed by the union of a street railway and electric light company, being corporations organized under the laws of this state, and having their principal place of business in the same town, village or city, may unite and consolidate with any corporation organized under the laws

of an adjoining state, and which, under and by virtue of the rights, powers and franchises possessed and enjoyed by it under the laws of such adjoining state, owns and operates a street railway therein, and also manufactures, produces, generates, sells and furnishes gas and electricity for heating, lighting and power purposes: Provided, however, That the street railway lines of the two corporations last mentioned shall form a connecting and continuous line of railway between this state and such adjoining state. Proviso.

(353) SEC. 2. The directors of such corporations so proposing to consolidate, may enter into an agreement for the consolidation of such corporations, prescribing the terms and conditions thereof; the mode of carrying the same into effect; the name of the new corporation; the location and principal place of business thereof; the number of directors thereof, which number shall not be less than three, and the names of those who shall be the first directors, and who shall hold office as such until the first election of directors; the time and place of holding the first election of directors of the consolidated company, which time shall not be less than three nor more than eight months after such consolidation; the general officers of such new company; the amount of the capital stock thereof; the number of shares into which the same shall be divided and the par value of each share; the manner of converting the shares of capital stock in each of the constituent companies, into shares in such new corporation, and such other details as may be deemed necessary to perfect such consolidation, or authorize or limit its bonded indebtedness. Directors may enter into agreement.

(354) SEC. 3. Such agreement shall not be deemed to be the agreement of such consolidating corporations until it shall have been ratified either by the vote of at least three-fourths of the capital stock of each of such corporations at a separate meeting of the stockholders of such corporation, held pursuant to a notice of the secretary thereof, stating the objects and purposes of such meeting, and which shall have been published at least once in each week for two successive weeks prior to such meeting, in some newspaper printed in the English language and published at the county seat of the county in this or in any other state in which such corporation has its principal place of business; or by the consent in writing to such agreement signed and acknowledged by all of the stockholders of any such corporation. Agreement, how ratified.

(355) SEC. 4. Upon the ratification of such agreement, in either of the modes aforesaid, by the stockholders of all of the corporations, who are parties thereto, such agreement, together with every such consent annexed thereto, together also with and annexed thereto a copy of the record of the proceedings had or taken at the meeting of stockholders of any such corporation for the ratification of such agreement as aforesaid, exhibiting the vote taken thereat upon the Agreement, records, etc., where filed.

question of such ratification, certified to be such copy by the secretary of such corporation under the seal thereof; and also having annexed thereto a statement of the secretary of each such corporation verified by his oath, setting forth the amount of the capital stock thereof, the number of shares into which the same is divided, the names of the stockholders and the number of shares held by each; and setting forth also in respect to any such consent of the stockholders of any such corporation that the same was signed and acknowledged by all of the stockholders thereof, and in respect to the meeting of stockholders of any such corporation called for the purpose of ratifying such agreement, and so ratifying the same as aforesaid, that the persons named as present or represented at such meeting are the identical persons so named in such statement as stockholders therein, shall be filed in the office of the secretary of state; and a copy thereof, certified by such secretary to be such copy, shall be recorded in the office of the register of deeds in each county of this state, in which any such constituent corporation has its principal place of business, and in the county wherein the location and principal place of business of such new corporation may be fixed by or designated in such agreement, if that be a county in this state other than a county in which one of said constituent companies has its principal place of business; and then and thereupon such consolidation shall be deemed complete. A copy of such agreement, so filed, and of the documents, papers and proceedings annexed thereto, and filed therewith, as required by this act, certified by the secretary of state to be such copy under the great seal of the state, shall be received in all courts of this state as prima facie evidence of the formation, existence and capacity of such consolidated corporation, in any suit or proceeding brought by or against the same, and of all the facts therein stated.

Copies,
where filed.

Evidence of
consolidation.

Powers, etc.,
of consolidated
company.

(356) SEC. 5. Such consolidated company shall have and succeed to all the property, powers, rights, privileges, franchises and immunities possessed and enjoyed by the constituent corporations forming the same, which were organized under the laws of this state; and such new corporation shall be subject to all restrictions and perform all duties imposed upon it by the laws of this state, and shall be and constitute a body corporate, under and by virtue of the laws of the state of Michigan.

An Act to enable any consolidated company formed prior to June first, eighteen hundred ninety-nine, by the union of a street railway company and an electric light company to acquire, possess and exercise all the rights, powers, privileges and franchises conferred upon electric light companies by section ten of the act of the legislature of the state of Michigan, entitled "An act to authorize the formation of electric light companies," approved April first, eighteen hundred eighty-one, as amended by act number ninety-six of the public acts of the legislature of the state of Michigan, passed at the regular session of eighteen hundred ninety-nine.

[Act 61, P. A. 1903.]

The People of the State of Michigan enact:

(357) SECTION 1. Any consolidated company formed prior to June first, eighteen hundred ninety-nine, by the union of a street railway company and an electric light company, under and pursuant to an act of the legislature of the state of Michigan, entitled "An act to authorize the consolidation of street railway and electric light companies," approved July third, eighteen hundred ninety-one, may, upon compliance with the provisions of this act, acquire, possess and exercise all the rights, powers, privileges and franchises conferred upon electric light companies by section ten of the act of the legislature of the state of Michigan, entitled "An act to authorize the formation of electric light companies," approved April first, eighteen hundred eighty-one, as amended by act number ninety-six of the public acts of the legislature of the state of Michigan, passed at the regular session of eighteen hundred ninety-nine.

How may
acquire cer-
tain powers.

(358) SEC. 2. In order to entitle any such consolidated company to the benefits of this act, the stockholders of said company, at any meeting of such stockholders duly called and held, by a vote of at least three-fourths of all the capital stock of said company then outstanding in favor thereof, may adopt a resolution that such company (naming it) desires, and avails itself of the provisions of this act, to acquire, possess and exercise all of the rights, powers, privileges and franchises mentioned and referred to in section one of this act; and stating and setting forth also the names of the towns, cities and villages and the county in which the operations of said company are to be carried on. When so adopted, a copy of such resolution with a certificate thereto affixed, signed by the president and secretary of such company and sealed with the corporate seal, stating the fact and date of the adoption of such resolution, and that such copy is a true copy of the original, and that the meeting at which such resolution was so adopted was duly called and held, shall be filed and recorded in the office of the secretary of state; and a copy of such resolution, certified and authenticated in like manner, shall be filed and recorded in the office of the county clerk of the county wherein the opera-

Resolution by
stockholders.

Where filed.

When deemed to have acquired powers.

tions of said company are to be carried on. And upon the filing of a copy of such resolution, certified and authenticated, as aforesaid, in the office of the secretary of state and in the office of the county clerk of the proper county, as hereinbefore provided, such consolidated company shall be deemed and taken to have acquired and to possess and to be entitled to exercise all of the rights, powers, privileges and franchises mentioned and referred to in section one of this act in the towns, cities and villages and in the county in which the operations of said company are to be carried on, as stated in said resolution, with the same force and effect as if the electric light company of which such consolidated company is in part constituted had been organized after the first day of June, eighteen hundred ninety-nine, for all of the objects and purposes for which, since said day, an electric light company might be organized under the laws of Michigan to carry on its operations in the cities, towns and villages and in the county in said resolution mentioned, and such consolidated company had thereafter and after said day been formed by the union of such electric light company with a street railway company.

What to be evidence.

(359) SEC. 3. A copy of the certificate and of the resolution to which the same is affixed, filed in the office of the secretary of state, in pursuance of this act and certified by him to be such copy under the great seal of the state, shall, in all courts and places, be prima facie evidence of all the facts therein stated.

SECTION VII.—CHANGE OF NAME.

An Act to authorize any corporation organized under the laws of the state of Michigan to change its name.

[Act 139, P. A. 1895.]

The People of the State of Michigan enact:

Name of any corporation organized under the laws of this state, how changed.

(360) § 8583. SECTION 1. That where no other provision is especially made, any corporation heretofore or hereafter organized under the laws of this state may amend its articles of association by the adoption of a new name for such corporation, by a vote of not less than two-thirds in interest of all its stockholders, but before it shall commence any business under its amended articles, the said corporation shall cause such amendment or amendments, subscribed by at least two-thirds in interest of all its stockholders, and certified by its president, to be filed or recorded, as the case may be, in the same manner as is provided for in its original articles of incorporation, and when so recorded, such amend-

ment or amendments shall become a part of the articles of incorporation of such company: Provided, however, No two corporations shall assume the same name, nor a name that shall be so similar as to be liable to mislead. Proviso as to names of corporations.

SECTION VIII.—FRANCHISE FEE.

An Act to provide for the payment of a franchise fee by corporations.

[Act 182, P. A. 1891.]

The People of the State of Michigan enact:

(361) § 8574. SECTION 1. That every corporation or association hereafter incorporated or formed by consolidation or otherwise, by or under any general or special law of this state, which is required by law to file articles of association with the secretary of state and every foreign corporation or association which shall hereafter be permitted to transact business in this state, which shall not, prior to the passage of this act, have filed or recorded its articles of association under the laws of this state and been thereby authorized to do business therein, shall pay to the secretary of state a franchise fee of one-half of one mill upon each dollar of the authorized capital stock of such corporation or association, and a proportionate fee upon any and each subsequent increase thereof; and that every corporation heretofore organized or doing business in this state which shall hereafter increase the amount of its authorized capital stock, shall pay a franchise fee of one-half of one mill upon each dollar of such increase of authorized capital stock of such corporation or association, and a proportionate fee upon any and each subsequent increase thereof: Provided, That the fee herein provided, except in cases of increase of capital stock, shall in no case be less than five dollars; and in case any corporation or association hereafter incorporated under the law of this state, or foreign corporation authorized to do business in this state has no authorized capital stock, then in such case each and every corporation or association so incorporated or doing business in this state shall pay a franchise fee of five dollars. All contracts made in this state after the first day of January, eighteen hundred ninety-four, by any corporation which has not first complied with the provisions of this act shall be wholly void. Foreign corporations may transact business. Pay franchise fee to the secretary of state. Proviso. When void.

FRANCHISE FEE: This act imposes a tax upon corporations for the privilege of doing business in Michigan. It is a tax upon the occupation of the corporation, avoiding all its contracts until the tax is paid. It must, therefore, be held not to apply to foreign corporations whose business within this state consists merely of selling through itinerant agents and delivering commodities manufactured outside of this state.—Coit & Co. v.

Sutton, 102 / 324. But when a foreign corporation comes into the state and asks to have its articles of association filed here and to be put upon the same footing as domestic corporations, the fee must be paid.—Moline Plow Co. v. St. Treasurer, 105 / 57. But this act does not apply to foreign corporations selling goods through itinerant salesmen.—Cordage & Supply Co. v. Mosher, 114 / 64. Nor does it apply to domestic corporations organized, not for profit, but for educational purposes only.—Mich. Female Seminary v. Sec'y of State, 115 / 118. Nor does it apply to any increase of stock made prior to 1893.—W. S. Asphalt Pav. Co. v. Sec'y of State, 115 / 234. While the failure of a foreign corporation to pay the franchise fee renders void its contracts, it does not affect the validity of its corporate existence.—Rough v. Breitung, 117 / 48. As to payment of franchise fees by a corporation formed by consolidation of a domestic corporation with a foreign corporation, see Ashley v. Ryan, 153 U. S. 436.

VALIDITY OF CONTRACTS: Contracts made in this state by any corporation which has not first complied with the provisions of this act are wholly void.—Rough v. Breitung, 117 / 56; Hastings Industrial Co. v. Moran, 143 / 682. The general attorney of a corporation cannot assert an estoppel against its claiming the invalidity of a contract made with him before its franchise fee was paid, since as general attorney he must have known that the fee was not paid, and that the contract relied upon was invalid.—Wright v. St. Louis Sugar Co., 146 / 555. This act is construed to be not applicable in cases where foreign corporations do business in the state merely by selling goods through itinerant agents, and delivering commodities manufactured outside of the state.—People v. Smith, 147 / 397.

Articles must
be accompa-
nied by fee.

(362) § 8575. SEC. 2. The secretary of state shall not receive for filing or record the articles of association of any corporation or association unless accompanied by the fee provided for in this act.

Disposition
of fees.

(363) § 8576. SEC. 3. The fees collected under the provisions of this act shall be paid into the state treasury, and shall be applied in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the state debt, in the order herein recited, until the extinguishment of the state debt other than the amounts due to educational funds, when such specific taxes shall be added to and constitute a part of the primary school interest fund, as provided in section I of article xiv of the constitution of Michigan.

Const. xiv, 1, of 1850 see now Const. x, 1 and 2 of 1909.

Corporations
renewing cor-
porate exist-
ence required
to pay fran-
chise fee.

(364) § 8577. SEC. 4. All corporations whose term of corporate existence, as fixed by their articles of association, shall have expired or shall be about to expire by limitation, and who shall renew such corporate existence, in accordance with law, shall, for the purpose contemplated by this act, be treated and regarded as new corporations, and shall be required to pay the fee provided by this act.

SECTION IX.—FOREIGN CORPORATIONS.

An Act to prescribe the terms and conditions on which foreign corporations may be admitted to do business in Michigan.

[Act 206, P. A. 1901, as amended.]

The People of the State of Michigan enact:

(365) SECTION 1. It shall be unlawful for any corporation organized under the laws of any state of the United States, except the state of Michigan, or of any foreign country, to carry on its business in this state, until it shall have procured from the secretary of state of this state a certificate of authority for that purpose. To procure such certificate of authority every such foreign corporation or association shall comply with the following provisions: It shall file and record in the office of the secretary of state a certified copy of its charter, or articles of incorporation, and file evidence of appointment of an agent in this state to accept service of process on behalf of said corporation, and shall pay to the secretary of state the requisite filing, recording and franchise fees. Such corporation, by its president, secretary, treasurer and superintendent, or any two of them shall make and file with the secretary of state a statement duly sworn to by at least two of such officers, in such form as the secretary of state may prescribe, containing the following facts:

First, The location of its principal office and its principal place or places of business, and the names and addresses of its principal officers;

Second, The location of its principal office and the principal place of business in Michigan, and the name and addresses of the officers or agent of the company in charge of its business in Michigan;

Third, The total value of the property owned and used by the company in its business, giving its location and general character and stating separately the value of its tangible property, of its cash and credits, its franchises, patents, trade marks, formulas, good will;

Fourth, The value of the property owned and used in Michigan and where situated;

Fifth, The total amount of business transacted during the preceding year and the amount of business, if any, transacted in Michigan;

Sixth, Such other facts bearing on the matter as the secretary of state may require, including a statement of the particular purpose, or the particular kind of business for which the company desires admission to this state.

Am. 1907, Act 310.

Despres, Bridges & Noel v. Zierleyn, 163 / 399.

The effect of the statutes regulating the right of foreign corporations to

engage in business of a local nature is to make them domestic corporations, entitled to, and subject to, the same remedies as corporations organized in Michigan.—*Showen v. J. L. Owens Co.*, 158 / 321. A foreign corporation cannot recover for local business, unless authorized to do business in Michigan.—*Imp. Curtain Co. v. Jacob*, 163 / 72.

A foreign copartnership association, limited, is not engaged in doing business in Michigan, in merely paying or attempting to pay debts in this state.—*Tidey v. Kent Circuit Judge*, 179 / 580.

Determina-
tion of author-
ized capital.

Hearing.

Appeal.

(366) SEC. 2. From the papers so filed and the facts so reported and any other facts coming to his knowledge bearing upon the question, the secretary of state shall determine the proportion of the authorized capital stock of the company represented by its tangible property in Michigan. Any such corporation shall have the right on application, to be heard by the secretary of state touching the matter of the determination of the proportion of its capital stock represented by such property used in Michigan. Any corporation aggrieved by the decision of the secretary of state, may, within ten days, appeal to a board of appeal, consisting of the auditor general, state treasurer and attorney general, whose decision in the matter shall be final.

Am. 1913, Act 277.

Franchise fee.

(367) SEC. 3. Such company shall pay to the secretary of state a franchise fee of one-half a mill on each dollar of the proportion of its authorized capital stock represented by the tangible property owned and used in Michigan, determined as above provided. And in case such corporation has not at the time of application for admission carried on business at least six months outside of Michigan, it shall pay a franchise fee on its entire authorized capital stock, but such fee shall in no case be less than twenty-five dollars.

Am. Id.

Certificate
of authority.

Proviso,
foreign
corporations.

(368) SEC. 4. When such corporation has fully complied with the provisions of this act, the secretary of state may issue to such corporation a certificate of authority to carry on such business in this state during the period of its corporate existence, but not exceeding thirty years: .Provided, That no such foreign corporation shall be permitted to transact business in this state, unless it be incorporated in whole or in part for the purpose or object for which a corporation may be formed under the laws of Michigan, and then only for such purpose or object. The secretary of state shall in the certificate which he issues state under what act such corporation is to carry on business in this state, and such corporation shall have all the powers, rights and privileges and be subject to all the restrictions, requirements and duties granted to or imposed upon corporations organized under such act; and the officers and directors of every such corporation shall be subject to all such requirements and duties as are imposed upon officers and directors of corporations organized under such act, and shall be subject to the same pen-

alties and liabilities for failure to perform any duties imposed by such act as are the officers and directors of corporations organized under such act: Provided, That the carrying on in this state by such corporation of business for which it has not been so admitted or failure to fully comply with the requirements of the act under which it has been so admitted shall be sufficient cause for revoking the certificate of authority to do business in this state, and the secretary of state may revoke such certificate and shall promptly notify such corporation of such revocation and the reasons therefor by notice sent by mail to the home office of such corporation.

Proviso,
revocation
of certificate.

Am. 1911, Act 266.

(369) SEC. 5. Every corporation which has paid a franchise fee and been admitted to do business in this state, which shall thereafter increase its authorized capital, or shall increase the proportion of its capital stock, represented by property used and business done in Michigan, shall within thirty days after such increase file an additional statement with the secretary of state and pay an additional franchise fee of one-half of one mill on each dollar of the amount of increase of its capital stock represented by property owned and business done in Michigan. And any such corporation shall at any time when requested by the secretary of state, file an additional statement under oath of at least two of its officers, showing the proportion of its property used and business transacted in Michigan. Every corporation subject to the provisions of this act, which shall neglect or fail to comply with its requirements, shall be subject to a penalty of not less than one hundred dollars nor more than one thousand dollars for every month that it continues to transact business in Michigan, without complying with the requirements of this act, to be recovered by action in the name of the people of the state of Michigan in any court of competent jurisdiction.

Statement
of increase.

Additional
statements.

Penalty for
violation
of act.

Am. 1907 (extra session), Act 3.

(370) SEC. 6. No foreign corporation, subject to the provisions of this act, shall be capable of making a valid contract in this state until it shall have fully complied with the requirements of this act, and at the time holds an unrevoked certificate to that effect from the secretary of state.

Contracts
void.

Am. 1907, Act 310.

(371) SEC. 7. It shall be unlawful for any person to act as agent for any foreign corporation not authorized to do business in this state or in any manner to aid in the transaction of the business of such unauthorized foreign corporation in this state. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and

Unlawful to
act as agent.

upon conviction thereof, shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars for each offense and in default of payment of such fine, shall be imprisoned in the county jail for a period of not less than thirty days nor more than one year, or he may be punished by both such fine and imprisonment at the discretion of the court.

Am. Id.

Not applica-
ble to certain
corporations.

(372) SEC. 8. The provisions of this act shall not be applicable to such foreign corporations as are permitted to do business in this state by license issued by the commissioner of insurance, or by the state treasurer, according to the provisions of law. Nor shall this act be construed to prohibit any sale of goods or merchandise which would be protected by the rights of interstate commerce.

Am. Id.

"Corpora-
tions" de-
fined.

(373) SEC. 9. The term "corporations" as used in this act shall be construed to include all associations, partnership associations and joint stock companies having any of the powers or privileges of corporations, not possessed by individuals or partnerships, under whatever term or designation they may be defined and known in the state where organized.

Am. Id.

Service of
process.

(374) SEC. 10. No such corporation having appointed an agent to accept service of process shall have power to revoke or annul such appointment until it shall have filled [filed] notice of appointment of some other person in this state as such agent. Service of process may also be made upon any officer or agent of such corporation in this state, or service may be made upon the secretary of state, who shall immediately notify the corporation thus served, by mailing notice thereof and a copy of such process to its address. There shall be paid to the secretary of state at the time of such service a fee of five dollars, which sum may be taxed as costs to the plaintiff in case he prevails in the proceeding.

Added 1907 (extra session), Act 3.

Corporations created in other states have no rights of citizenship here.—*Home Ins. Co. v. Davis*, 29/238. Nor can such a corporation exercise any of its powers or franchises here, without legislative permission, express or implied.—*Thompson v. Waters*, 25/214. Such assent may be denied entirely, or it may be granted upon conditions. And as a condition for permission to carry on business here, such corporations may be required to submit their controversies here, to the exclusive jurisdiction of the state courts.—*Home Ins. Co. v. Davis*, 29/238. The right of a foreign corporation to do business in Michigan is a matter entirely under the control of the legislature, which may deny such right at any time, except that the denial must not amount to a regulation of commerce, interstate or foreign; and the conditions upon which foreign corporations may do business within this state to this extent are absolutely within the discretion of the legislature.—*Isle Royale Land Co. v. Osmon*, 76/163. Act No. 79, Laws of 1893, does not apply to foreign corporations whose business within this state consists merely of selling through itinerant agents, and delivering, commodities manufactured outside of this state.—*Coit & Co. v. Sutton*, 102/324; but where a corporation so engaged files a copy of its articles of association in this state, and pays the specified franchise fee under protest, mandamus

will not lie to compel the repayment thereof.—*Moline Plow Co. v. State Treasurer*, 105/58. See also *People v. Smith*, 147/397. Contract in this state for sale of its property by a foreign corporation which has not paid its franchise fee required by Act 79 of 1893 is void.—*Rough v. Breitung*, 117/48. If they (brewing companies) establish places within this state, distinct from the manufactory, where their goods are to be stored, for the purposes of sale and delivery, and such goods are sold and delivered, then they become traffickers, within the meaning of the law, and are liable to pay the tax.—*Reymann Brewing Co. v. Brister*, 179 U. S. 445; cited in *People v. Voorhis*, 131/398. A contract by a foreign corporation to construct and equip a factory in this state, in the performance of which materials must be purchased and labor performed in this state, notwithstanding the machinery is manufactured and shipped from another state, and the corporation maintains no office, warehouse or general agent in the state, is not interstate commerce, and the contract is not exempt on that ground from the operation of the statute. (Act 206 of 1901.)—*Hastings Industrial Co. v. Moran*, 143/679. Mandamus will not issue to compel the secretary of state to receive, file and record the papers of a foreign corporation which, as appears from its history, etc., desires to come within the state for the purpose of selling its bonds and securities which are practically worthless.—*N. Y. Mortgage Co. v. Sec'y of State*, 150/198. Effect of amendment of statute.—*People v. Crucible Steel Co. of America*, 150/563. Exemption of people from liability for costs in actions against foreign corporations to recover penalties.—*People v. Crucible Steel Co.*, 151/618. Construction of statute relative to contracts.—*Stack v. Detour Lumber & Cedar Co.*, 151/21.

CHAPTER IV.—GRADE SEPARATION.

An Act to provide separate grades for railroads and public highways and streets where railroads intersect such highways and streets.

[Act 92, P. A. 1893.]

The People of the State of Michigan enact:

(375) § 4229. SECTION 1. That where any railroad crosses or shall hereafter cross any public street or highway the separation of the grades at such crossing by carrying such street or highway, either over or under such railroad or railroads at the point of intersection may be effected as follows:

An agreement therefor as hereinafter provided may be made with such railroad or railroads:

(a) Where said crossing is within the limits of any city, by the common council of said city;

(b) Where said crossing is within any county outside the limits of any city and upon any state or territorial road, by the board of supervisors of said county;

(c) Where said crossing is within any county outside the limits of any city and upon any county road, by the board of commissioners of county roads, provided for in section forty-nine of article four of the constitution;

(d) Where said crossing is within any township outside the limits of any city and upon any township road, by the township commissioner of highways;

(e) Where said crossing is on the line between any city and the territory outside such city, as follows:

Where railroad crosses public highway.

Point of intersection.

Agreement to be with railroad.

By common council.

By supervisors.

By commissioners of county roads.

By township highway commissioner.

When crossing is between city and outside territory.

By joint action
of council and
supervisors.

1. Where the crossing is on a state or territorial road, by the joint action of the common council of the city and the board of county supervisors;

By joint action
of council and
county road
commissioners.

2. Where the crossing is on a county road, by the joint action of the common council of the city and the board of commissioners of county roads;

By joint action
of council and
highway com-
missioner.

3. Where the crossing is on a township road, by the joint action of the common council of the city and the township commissioner of highways;

By boards of
supervisors,
commissioners
of roads, etc.

(f) Where the crossing is on the line between two or more counties, or between two or more townships of the same county, by the joint action of the boards of county supervisors; boards of commissioners of county roads, or township commissioners of highways, according as the crossing is on a state or territorial road, a county road, or a township road.

Judicial pro-
ceedings.

Or judicial proceedings may be instituted to obtain such separation of grades in accordance with the provisions of section ten of this act. The words "representative board or officer," where occurring hereinafter, shall be understood to mean board or boards of supervisors, board or boards of commissioners of county roads, township commissioners or commissioners of highways, common council, or any two or more of them, as the case may be.

"Representa-
tive board or
officer," how
understood.

Although an agreement between a city and a railroad company for the construction of a viaduct to carry a street across the track is for the purpose of obtaining a right of way over the track, where there is no existing right of way it is none the less subject to the provisions of this act.—Harper v. Detroit, 110/427; Phelps v. Detroit, 120/447.

As to who may determine the necessity for a separation of grades, see Att'y Gen. v. Com'r of Railroads, 117/477. A tenant's term is "property" for injury to which he is entitled to compensation.—Detroit v. Little Co., 141/637; *Id.* 146/373. See Highway Com'r v. Wabash R. Co., 148/438; City of Detroit v. D. U. Ry., 156/106.

Board, etc.,
may enter
into agree-
ment with
railroad
company.

(376) § 4230. SEC. 2. Such representative board or officer, as the case may be, may enter into an agreement with any railroad company or companies crossing any such street or highway providing for the separation of the grades at such crossing by carrying said street or highway either over or under said railroad at the point of intersection. Said agreement shall have attached thereto as a part thereof, an accurate profile and map of those portions of the street or highway and railroad or railroads of which the grade is to be changed according to the said agreement and a plan showing the details of construction necessary for the separation of the grades at such crossing. Said agreement shall also provide for paying the cost of making and maintaining such separation of the grades and for the division of the total expense thereof between the parties to such agreement, and shall fix the amount of damages, if any, to be paid to said railroad company or companies as compensation for any injury to it or them resulting from said changes of grade, exclusive of the expense of construction and maintenance above provided for:

Profile
and map.

Agreement,
provisions of.

Provided, That no agreement made by a board of county supervisors, board of county commissioners of highways, or township highway commissioner which necessitates the borrowing or raising by tax of a greater sum by the county or township than such board or (commissioner) commissioners is authorized to raise, shall be enforceable until the authority to raise such excess has been duly given; nor shall any agreement made by a township commissioner of highways be valid until the same is approved by the township board.

Am. 1909, Act 268.

The amendment of 1909 is constitutional and does not deprive persons of property without due process of law.—Mead v. M. C. R. Co., 174/521.

(377) § 4231. SEC. 3. When the common council of any city shall have entered into any such agreement, it shall be authorized to settle or compromise with any person having an interest in any lands abutting on that portion of the street or highway within the city of which the grade is to be changed according to the said agreement, and which may be damaged by the proposed change of grade, and with any street railroad company operating or interested in any line of street railway upon such part of such street or highway and which may be damaged thereby. When a common council, being a party to such agreement, cannot effect such settlement or compromise, or shall deem it inexpedient to attempt it, or whenever the representative board or officer of any county or township is a party to such agreement, such common council, or representative board may pass a resolution, or such representative officer may make a certificate, declaring it necessary for the public benefit to make such separation of grades in accordance with the plan prescribed by said agreement, which resolution or certificate shall have attached thereto as a part thereof, a copy of the said agreement. Upon the passage of such resolution, or the making of such certificate, it shall be filed in the office of the city attorney of the city where the crossing is within the city, or upon the line between any city or county, or part of a county outside of such city, and in the office of the prosecuting attorney of the county where the crossing is outside of the limits of any city and within such county. Where the crossing is on the line between two or more counties, the resolution so passed shall be transmitted to the railroad and street crossing board hereinafter provided for, who shall file the same in the office of the prosecuting attorney of either of the counties interested as the said crossing board shall determine. And said resolution shall also be recorded in the office of the register of deeds of the county or counties in which such crossing is situated within twenty days after its adoption. The question of the necessity of making the proposed change or changes of grade, shall then be passed upon, and the damages, if any, shall be appraised in judicial proceedings in the manner hereinafter provided. But in any proceedings instituted on any

Council to settle or compromise with property owners.

When council cannot effect settlement.

May pass a resolution.

To be attached to agreement.

When filed.

Where recorded.

Damages, how appraised.

such resolution said agreement shall be conclusive evidence of the amount of compensation to be awarded to said railroad company or companies, and no benefits shall be assessed against any railroad company that is a party to such agreement.

Harper v. City of Detroit, 110 / 427.

Sections 4, 5, 6, 7 and 8 provided for the appointment of a railroad and street crossing board, filing of their oaths and bonds and compensation of members. By the provisions of Act No. 300 of 1909 the duties and privileges imposed and conferred upon this board are now imposed and conferred upon the Michigan Railroad Commission.

When commission to investigate as to necessity of separation of grades.

Notice to be served upon whom.

When notice to be served on railroad company.

(378) § 4237. SEC. 9. If any railroad company operating a railroad which crosses any such street or highway and the representative board or officer are unable to agree, in accordance with the provisions of section two of this act, or if such agreement having been made fails to become enforceable by reason either of a failure to agree with the abutting property owners or with any street railway company under the provisions of section three of this act, or of a finding of the commissioners hereinafter provided for against the necessity of the proposed separation of grades, then on presentation to the board of railroad and street crossings (railroad commission) of a certificate made by such representative officer, or of a certified copy of a resolution passed by said representative board or boards, or when more than one board is interested, by any one of them declaring that the separation of the grades at said crossing is necessary for the public benefit, or on presentation to said crossing board (railroad commission) of a petition signed by twenty owners of real estate abutting on said street or highway, praying said board (commission) to investigate the necessity of separating the grades at such crossing, it shall thereupon be the duty of the said board (commission) to investigate the necessity of the separation of the grades at such crossing. Before proceeding with such investigation said board (commission) shall cause a notice of the time and place at which the investigation will commence to be served at least ten days before the time set for the investigation upon the prosecuting attorney of each county interested, if any, and upon the highway commissioner of each township interested, if any, upon the city attorney of the city interested, if any, either personally or by leaving such notice at the office of such prosecuting attorney or city attorney or commissioner, with some person in charge thereof, or if such office is not open so as to admit of service, by leaving such notice at the residence of such attorney or commissioner, with some person of suitable age and discretion. Within the same time said board (commission) shall cause such notices to be served upon each railroad company interested in said crossing by leaving a copy thereof at the principal business office of such company situate within this state with either the president, vice president, general superintendent, or general manager of such

company, or if none of said officers can be found, then by leaving said copy with any officer or agent of said company in charge of any of its stations or depots within this state. Any corporation or body politic so notified, and any other person interested in said crossing may attend upon said investigation. If the board (commission) or a majority thereof determine that a separation of grades is necessary they shall determine whether the grade of said railroad or railroads shall be raised or lowered, and how much, and whether the grade of said street or highway shall be raised or lowered, and how much: Provided, That in such separation of the grades the maximum of one foot in ten for the new grade of the street or highway and one foot in one hundred for the new grade of the railroad shall not be exceeded. And having determined the manner of making such separation as they, or a majority of them shall deem best, they shall also estimate as near as may be and determine the cost and expense of doing and constructing the work provided by section twenty-seven, to be done by said railroad company or companies, and the portion of such cost or expense if any, which would be just and equitable that the city, county or township, by whom it is provided herein, the expense of such separation shall be paid, shall pay to said company or companies, as its fair share thereof, and they shall also determine the cost and expense of the work to be done or constructed by the city, county or township as provided by said section twenty-seven, and the portion thereof, if any, which would be just and equitable, that said company or companies should pay to said city, county or township, as its or their fair share of the said cost and expense. They shall adopt a plan showing the details of construction necessary for the separation of the grades at such crossings by carrying such street or highway either over or under said railroad or railroads, as they or a majority of them shall deem best. They shall have an accurate profile and map made of those portions of the street or highway and railroad or railroads of which the grade is to be changed. They shall make report signed by a majority of the said board (commission), setting forth in detail the plan by them adopted as aforesaid, to which report shall be attached as a part thereof the plan of construction, and profile and map above referred to and in which report shall be stated the cost and expense as determined by them of doing and constructing the work to be done by said railroad company or companies and the portion thereof, if any, which it would be just and equitable that the city, county or township shall pay to said company or companies, as above provided, and also the cost and expense of the work to be done or constructed by the city, county or township and the portion thereof, if any, which would be just and equitable that said company or companies should pay to said city, county or township, as

Who may attend investigation.

Proviso as to maximum grade.

Plans showing details of construction.

Profile and map to be made.

Report to be made as to plan adopted.

Where filed.	above provided, which report shall be filed in the office of the city attorney of the city when the crossing is within a city or on a line between a city and the county, and in the office of the prosecuting attorney of any county where the crossing is outside of any city and within such county, or on the line between such county and any other county or counties. To assist said board (commission) in determining upon and making said plan, profile, map, estimates, and the report herein mentioned, they may employ an engineer, and such clerical assistance as they may need. The expense of such employment shall be audited and paid in the same manner as provided for their other expenses.
Engineer and clerical assistance may be employed.	
When proceedings to be instituted.	(379) § 4238. SEC. 10. Upon the filing either of the resolution or certificate referred to in section three, or of the report referred to in section nine, it shall be the duty of the officer with whom said resolution, certificate or report is filed, to institute proceedings without delay in behalf of the city or county, or of the township whose commissioner made the certificate, as the case may be, in the proper court to carry out the object of said resolution, certificate or report.
Where proceedings to be had.	When said resolution, certificate or report is filed with the prosecuting attorney of a county, said proceedings shall be had in the circuit court for that county. When said resolution, certificate or report is filed with the city attorney of a city, said proceedings shall be had in the recorder's court of the city, if there be one, but if not, then in the superior court of the city, if there be one, and if there be neither recorder's court nor superior court then in the circuit court of the county in which the city is situated: Provided, That if the crossing be on the line between the city and territory outside the city limits, the proceedings shall be had in the circuit court of the county in which the city is situate.
Proviso.	
Petition to be filed with court.	(380) § 4239. SEC. 11. Said prosecuting attorney or city attorney, as the case may be, shall prepare and file in the name of the county, township, or city in the court having jurisdiction of the proceedings, a petition signed by him in his official character, and duly verified by him, to which petition a certified copy of the resolution, or certificate of the representative board or officer referred to in section three, or of the report of said railroad and street crossing board (railroad commission), as the case may be, shall be annexed, which certified copy shall be prima facie evidence of the action taken by said board or officer and of the proceedings prior thereto, and of the regularity thereof. The petition shall state that it is made and filed as commencement of judicial proceedings by the county, township or city, as the case may be, in pursuance of this act for the purpose of separating the grades of the street or highway or of two or more streets or highways and railroad or railroads at their intersection, designated by any proper descriptive words, in accordance with the plan set forth in said resolution, certifi-
What to state.	

cate or report, as the case may be, referring thereto, and for making just compensation, to all persons sustaining damage thereby, shall give a description of the property abutting on that part of said street or highway of which the grade is to be or has been changed, also a statement of the manner in which said property and any street railroad line on said street or highway will be affected by said change, and to what extent, and shall state that such representative board or officer or said railroad and street crossing board (railroad commission), as the case may be, has declared it necessary for the public benefit to make said separation of grades in accordance with the plan set forth in said resolution or certificate or in said report, as the case may be, shall contain the names of the railroad companies and street railroad companies to be affected by the proposed change, and of all persons interested as mortgagees, lessees, or otherwise, in the property of such companies, of the owners and others interested in the property, abutting on that portion of said street or highway of which the grade is to be or has been changed so far as the same can be ascertained, including those in possession of the premises, and in cases where the crossing is of a class embraced in clause (e) or (f) of section one of this act, the name of the city, or of the county or counties, township or townships interested, other than the county or township in whose name the proceedings are taken as the case may be. If the name of any person interested in any of the abutting property is unknown, the petition shall state the fact and the interest owned by such person or persons. All persons, corporations and bodies politic and corporate, so named in said petition shall be made parties respondent in said petition. Said petition shall ask that a jury be summoned and empanelled to ascertain and determine the public necessity of said improvement in accordance with said plan and to ascertain and determine the just compensation to be made to street railroad companies, if any, and to the persons interested in said abutting property. And to assess the compensation, cost and expense by them awarded against the city and county or counties, township or townships, company or companies, as the case may be, that are parties to the proceeding, as provided by law. Upon receiving such petition, it shall be the duty of the clerk of said court to issue a summons against the respondents named in said petition, stating briefly the object of said petition and commanding them in the name of the people of the state of Michigan to appear before said court at a time and place to be named in said summons not less than twenty nor more than forty days from the date of the same, and show cause, if any they have, why the prayer of said petition should not be granted. The filing of said petition, if done within one year, after the making of said separation of grades, whether in any railroad or in any street or highway, and all other changes necessary to

Parties
respondent.

Jury may be
summoned.

To assess
cost against
city.

Clerk
to issue
summons.

Filing of
petition,
what deemed.

carry out the plan set forth in the resolution or certificate provided for in section three shall be deemed a compliance with the provisions of this act requiring the filing of said petition for any work done or to be done in connection with any separation of grades as herein provided.

Am. 1909, Act 268.

Detroit v. Little Co., 141 / 642.

Under the amendment of 1909, it is not necessary for the common council to determine the necessity in advance of the actual work; or that the resolution be filed with the corporation counsel as a prerequisite to commencing the separation; or that it be recorded with the register of deeds, if the property owners have actual notice of the proceedings.—Mead v. Michigan Central Railroad Co., 174 / 521.

Who to serve
summons.

When re-
spondent
cannot be
found.

Summons to
be served on
guardian of
minors.

Service of
summons to
be made by
publication.

Affidavit of
publication to
be evidence
of service.

(381) § 4240. SEC. 12. Said summons shall be served by the sheriff, under sheriff, or a deputy sheriff of the county, or in proceedings pending in the recorder's court or superior court of any city, by any member of the police force of such city, at least five days before the return day thereof upon all the respondents found within the county, by exhibiting the original and delivering a copy thereof to each of them. If any respondent who is a resident of the county, cannot be found, the summons shall be served by leaving a copy thereof at his usual or last place of abode with some person of suitable age and discretion. If any minor or person of unsound mind is a respondent, service may be made on the guardian of such person, if there be one, and if there is no guardian, the court may appoint some discreet and proper person to be guardian of such person in such proceedings; and such guardian shall have the authority to represent such person in such proceedings, and the proceedings to appoint such guardian shall be the same as provided in chapter two hundred four of the compiled laws of eighteen hundred seventy-one of the state of Michigan. If it shall appear on the return day of the summons that any respondent cannot be found within the county and has not been personally served, or is a non-resident, and such respondent has not voluntarily appeared, or if the name of any person interested is unknown, the court may make an order for the appearance of all respondents who have not been personally served and have not appeared, at a date not less than thirty days from the date of such order, and that service be made upon them by publishing a copy of such order, at least once in each week for three successive weeks, before the date set for said appearance, in a newspaper printed, published and circulated within the city or county as the case may be, and if there be no such paper, then in such paper as the court shall consider to be most generally circulated within the city or county. Alias and pluries summons may be issued and the court may adjourn the proceedings from time to time as there shall be occasion and as in other civil cases. The return of the officer upon the summons and an affidavit of due publication of the order for appearance, if any, shall be filed

in the office of the clerk of the court before a jury shall be impaneled and such a return of personal service or such affidavit shall be sufficient evidence of service on the respondents and of the manner of service, and such service shall bind the respondents and unknown parties in interest and the property in which they are interested.

(382) § 4241. SEC. 13. On the return day of the summons or on some subsequent day to which the proceedings are adjourned, if no sufficient cause to the contrary has been shown, the court shall make an order that a jury shall be empaneled in the cause to ascertain and determine the necessity for the public benefit of separating the grades of said streets or highways, and of said railroad or railroads at their intersection, in accordance with said proposed plan and to ascertain and determine the just compensation to be made therefor to the street railroad companies, if any, and persons interested in the abutting property made parties respondent to said petition, and to assess the costs and expenses by the act to be assessed as provided herein.

Jury to be empaneled on return of summons.

To determine necessity of separating grades.

(383) § 4242. SEC. 14. Such jury shall be composed of twelve freeholders of the city or county, as the case may be, and shall be selected and empaneled as follows: The sheriff shall select at least twenty-four persons, freeholders of said city or county, from whom a jury shall be empaneled in the cause, and the names of said twenty-four or more persons having been selected and returned by the sheriff, as directed by said order, the court shall thereupon cause such persons to be summoned by the usual process of venire to attend the court on a day to be named in said venire to serve as jurors, and the court shall then adjourn all further proceedings on said petition till the return day of said venire. Said venire shall be served by the sheriff or his deputy as in other like cases. On the return day of said venire, or on the day to which the proceedings may be adjourned, the court shall proceed to empanel a jury of twelve disinterested freeholders from persons so drawn and summoned. And if such jury cannot be found from the persons who shall attend upon such summons, or if so many of the persons summoned shall be excused or shall be rejected by the court upon challenge or otherwise that there shall not be a sufficient number left to constitute a jury, the court shall order the sheriff of said county forthwith to summon immediately other freeholders of the said city or county to attend as jurors, until a panel of twelve qualified jurors shall be obtained. In empaneling a jury the practice and proceedings shall be the same as in ordinary civil suits so far as practicable. Four peremptory challenges shall be allowed to the petitioner, and the respondents who are the persons interested in the abutting property and any street railroad company shall collectively be entitled to the same number. If any juror, after being sworn, shall die or become unable to discharge his duties, the

Who to compose jury.

Manner of selecting.

Venire to be served by sheriff.

In case juror dies or becomes sick.

court may appoint another qualified person to serve in his place, who shall be sworn and take his place upon the jury, or may, in its discretion, empanel a new jury.

Jury to
be sworn.

To hear
proofs.

Shall be in-
structed as
to law.

To report
in writing.

Disagreement
of jury.

When new
jury may
be drawn.

Court may
allow jury to
take maps,
descriptions,
etc., of lands
damaged.

(384) § 4243. SEC. 15. The jury so empaneled shall be sworn or shall affirm that they will justly and impartially ascertain the necessity of separating the grades of said street or highway and of said railroad or railroads as proposed in said petition, and if they deem that such necessity exists that they will impartially ascertain and determine the compensation to be made to the parties respondent and unknown parties in interest named in said petition. The jury shall hear the proofs and allegations of the parties and the arguments of counsel and if so ordered by the court to go to the place of intended improvement, and in charge of an officer, and upon, or as near as practicable, to any property claimed to be damaged in making the same and examine the premises. They shall be instructed as to their duties and the law in the case by the court, and shall retire in charge of an officer and render their verdict in the same manner as on the trial of an ordinary civil case. The testimony given shall be reported, all objections made and the rulings of the court thereon, the exceptions taken being noted by the regular court stenographer and the charge of the court or instructions given to the jury shall likewise be reported by him. The jury shall report in writing as to each distinct parcel of land and as to each street railroad company claimed to be damaged and the interests in the same separately, and when all is finished, bring the report into court, and the same shall be filed with the clerk. A disagreement of the jury as to one or more distinct parcels of land shall not affect their report as to any lands in regard to which they have agreed, and upon such disagreement the court may upon motion of the petitioner, with a view to further proceedings, permit the petition to be so amended as thereafter to relate only to the premises affected by such disagreement, and to the persons interested therein, and may also cause a new jury to be drawn and empaneled, which new jury shall be drawn and empaneled in the same manner as above provided for the drawing of the original jury, and like proceedings as above provided shall thereupon be had, as to the lands concerning which there was such failure to agree and such new proceedings may be ordered by the court as often as may be necessary. The court may allow the jury to take with them when they retire, proper descriptions of the land claimed to be damaged as well as maps of the same and of the premises adjacent thereto and showing the proposed improvement and such other papers as the court in its discretion may deem it proper for them to have, including forms of verdict containing a description of the property and the names of the occupants or owners or other persons interested therein, and in which they may find necessary to make the proposed im-

provement as aforesaid, or may not find it necessary to make such improvements, such forms to be made under the direction of the court, or the verdict may be prepared by the jury. The verdict of the jury may be set aside by the court and a new trial ordered for objections of law and for matters of substance, but not for objections as to matters of form, and in the same manner and on the same ground as an ordinary civil action in courts of general jurisdiction. The court may, before the jury is finally discharged, refer their verdict and findings back to them for the correction of any errors, defects or insufficiencies therein contained. The verdict of the jury shall be in writing and shall be signed by them.

When verdict of jury may be set aside.

Court may order verdict of jury back for correction.

(385) § 4244. SEC. 16. The jury shall in their verdict, ascertain and determine the necessity for the separation of the grades of said street or highway, and of said railroad or railroads, as proposed in said petition. And if they find that such necessity exists they shall then ascertain and determine the amount of damages to such property as may be damaged thereby, and also to any street railway so damaged and shall award to the parties interested compensation for such damages. If any property damaged shall be subject to a mortgage or lease, or to any lien or estate or interest otherwise arising, they shall apportion the compensation awarded among the parties interested therein as they shall deem just. In case the owner of any interest in any property damaged is unknown, they shall determine the compensation for damages to such interest and the same shall be paid into court for the benefit of such persons. They shall state separately the several amounts of damages by them awarded, and any apportionment of damages among different interests by them made. The amount of cost and expense which it would be just and equitable that the city, county or township should pay to said railroad company or companies, for the doing and construction of the work to be done by it or them, and determine by said crossing board (railroad commission) and stated in their report as provided by said section nine, and the amount of cost and expense which it would be just and equitable that said company or companies should pay to the city, county or township for the work to be done or constructed by the city, county or township, and determined by said crossing board (railroad commission) and stated in their said report shall be final and conclusive. And the said jury shall assess in their said verdict the total compensation by them awarded for damages for such property as may be damaged by such improvements to the parties interested therein and to any street railroad company, and also assess the amount determined by said report of the crossing board (railroad commission) to be paid by said city, township or county, as its fair share of the expense of the work to be done said railroad company or companies, when the crossing is within the limits of the petitioner, against the petitioner, and in all

What shall be determined in the verdict.

In case owner unknown, amount to be paid to court.

Jury to assess total compensation to be awarded.

When
amounts
assessed to
be paid.

Likewise as
to cities.

When amend-
ments may
be allowed.

When motion
for new trial
shall be made.

Order of con-
firmation un-
less reversed
by supreme
court to
be final.

other cases against the city, and county or counties, town-
ship or townships, as the case may be, that are parties to the
proceedings in equal shares. Said last mentioned amount to
be assessed in favor of and to be paid to said railroad com-
pany or companies. And they shall likewise assess against
the said railroad company or companies and in favor of and
to be paid to said city, county or township the portion of the
cost or expense which it was determined by said crossing
board (railroad commission) would be just and equitable,
that said company or companies should pay to the petitioner
or other body politic to whom the same are awarded in the
report of said crossing board (railroad commission). Amend-
ments either in form or substance may be allowed in any
paper, petition, resolution, process, record or proceeding, or
in the description of property damaged or claimed to be
damaged or in the name of any person whether contained in
the resolution or certificate of the representative board or
officer, in the petition of property owners or in the report of
railroad and street crossing board (railroad commission) or
elsewhere, wherever the amendment will not interfere with
the substantial rights of the parties. Any such amendment
may be made after, as well as before the order confirming the
verdict of the jury. Motions for a new trial or to arrest
proceedings shall be made within two days after the rendition
of the verdict unless further time is allowed by the court.
And if no such motion is made, or if being made, is over-
ruled, the court shall enter an order confirming the verdict
of the jury, containing a recital of the substance of the pro-
ceedings and a description of each parcel of real estate for
damages to which compensation is awarded, with the state-
ment of the interest of any unknown party therein, and the
name of each railroad company, street railroad company,
municipality, or other party in interest in the proceedings
to whom compensation for damages is awarded or to whom
any of said costs or expense may be awarded or against
whom the payment of any sum by said jury may be charged or
assessed, which order shall also direct by whom, to whom,
and in what time the payment of the sums awarded is to be
made and said order of confirmation, unless reversed by the
supreme court, shall be final and conclusive as to all persons
interested therein.

Detroit v. Little Co., 141 / 643.

Appeal may
be made.

Written notice
to be filed.

(386) § 4245. SEC. 17. Any party to said proceedings,
considering himself aggrieved, may appeal from the order of
the court confirming the verdict of the jury, by filing with
the clerk of the court a written notice of such appeal within
five days of the confirmation, and within the same time serv-
ing a copy thereof upon the attorneys of the adverse parties,
and filing a bond in said court, to be approved by the judge
thereof, conditioned for the prosecution of said appeal to

judgment and payment of all costs, damages and expense that may be awarded against him in case the judgment of confirmation shall be affirmed. Such appeal shall be perfected within the same time and prosecuted in the same manner as appeals under the general act for taking private property for public use in cities and villages. In case of such an appeal the clerk of the court, on payment of his legal fees and charges, shall transmit to the supreme court a certified copy of the necessary files, records and proceedings in the case, and the judge of the court shall, at the request of the appellant, settle a case according to the usual practice of said court, showing the material evidence and instructions given to the jury bearing upon any disputed points to which exception is taken, and the objections, rulings and exceptions in the case, all of which shall be returned by said clerk as part of the records to the clerk of the supreme court.

To come under general act.

Copy of records, files, etc., to be transmitted to supreme court.

(387) § 4246. SEC. 18. The said appeal may be brought on for a hearing at any term of the supreme court, and said court may affirm, or for any substantial error reverse the judgment, and may grant a new trial. The said court shall allow the prevailing party his reasonable costs and expenses to be taxed, and give judgment as in chancery appeals, and all costs, damages and expenses awarded to the city, township or county, if it so elect, may be applied on or deducted from the compensation, if any to be paid, or execution may issue on the judgment. Damages may be awarded against a party appealing without reasonable cause.

Hearing to be had at any term of supreme court.

Court shall allow costs, expenses, etc.

(388) § 4247. SEC. 19. The total compensation for damages and expenses, if fixed by agreement, settlement or compromise under the provisions of sections two and three of this act, or if fixed by a jury, such total compensation less the total amount assessed against the railroad company or companies as hereinbefore provided, shall be paid by the city, township or county in whose name the proceedings are instituted, except in cases where some city, county or township is a party respondent, in which case it shall be paid by the city and county or counties, township or townships that are parties to the proceedings, as the case may be, in equal shares. Any sum assessed against any railroad company, as hereinbefore provided, shall be paid by such company to the petitioner.

Compensation, by whom paid.

(389) § 4248. SEC. 20. When the verdict of the jury shall have been finally confirmed by the court, and the time in which to take an appeal has expired, or if an appeal is taken on the filing in the court below of a certified copy of the order of the supreme court affirming the judgment of confirmation, it shall be the duty of the clerk of the court to transmit to the common council of the city, when a city was a party to the proceedings, and to the county clerk of each county, and to the township clerk of each township that was a party to said proceedings, a certified copy of the verdict

Clerk of court to transmit copy of verdict to what persons.

and of the judgment of confirmation, and of the judgment, if any, of affirmance; and thereupon the proper and necessary proceedings in due course shall be taken for the collection of the sum or sums awarded by the jury.

Compensation shall be assessed.

Shall determine district benefited.

Persons objecting to have hearing.

Notice to be published.

Form of notice to be published.

(390) § 4249. SEC. 21. If the common council of any city which has been such party believe that either a portion of said city in the vicinity of the proposed separation of grades, or any street railroad company which owns or operates a line, any part of which is within said city, and which was a party to such proceedings, or both such portion of the city, and any such company or companies will be especially benefited by such separation, they may, by an entry in their minutes, provisionally determine that the whole or any just proportion of that part of the compensation awarded for damages and expenses which is apportioned to said city, shall be assessed upon the owners or occupants of real estate, or upon such company or companies, or upon both such portion of the city and such company or companies deemed to be thus benefited; and thereupon they shall, by resolution, provisionally determine the district or portion of the city benefited, if any, and the amount to be assessed upon the owners or occupants of real estate therein, or upon said company or companies or upon both. The assessment district and the amount to be assessed having been thus provisionally determined, said common council shall fix a date for the hearing of persons objecting to the constitution of said assessment district, and to the amount to be assessed, and to the assessment of said company or companies, and shall cause a notice to be published once in each week, immediately preceding said hearing, for three successive weeks, in a newspaper printed, published and circulated in the said city, or if there be no such paper, then in such newspaper printed and published in the state as said board shall deem to be most generally circulated in said city, which notice shall be substantially as follows: To (stating the name of all owners and occupants of real estate in said assessment district so far as known) and to all other persons owning and occupying or otherwise interested in the following described real estate (giving the description of all real estate in said district), and to (giving the names of the street railroad companies to be assessed, if any), you are hereby notified that the sum of — dollars is the proportion of the amount of compensation awarded in consequence of the separation of grades of the street (or highway and railroad or railroads or any of these as the case may be) to be made at the intersection of (describing the intersecting street or highway and railroad or railroads by their names and in appropriate language) provisionally determined by the (giving name of the common council) to be assessed upon the above described real estate which has been provisionally constituted an assessment district therefor (upon said street railroad com-

panies, naming them, or upon both said companies and said real estate as the case may be). You will be given opportunity at the meeting of (giving name of said common council) to be held on — to show cause, if any there be, why any of the above described real estate should not be included in said assessment district, or (why said companies should not be assessed, or both, as the case may be), and why the amount to be assessed should not be fixed at the sum above stated.

Signed—(name of presiding officer of said common council).

(391) § 4250. SEC. 22. At the meeting of said common council designated in said notice, opportunity shall be given to said street railroad companies to show cause why they should not be assessed, and to any persons owning, occupying or otherwise interested in any real estate included in said assessment district, to show cause why their real estate should not be included in said district, and to said companies and to any person so interested as aforesaid, opportunity to show cause why the amount to be assessed should not be fixed at the sum provisionally determined as aforesaid. Said common council shall, at the same meeting, or at any subsequent meeting to which the consideration of the matter may be adjourned, determine said assessment district, either as originally made or with the omission of such parcels of real estate as in their judgment should be omitted therefrom, and determine whether said companies shall or shall not be assessed; and shall at the same time determine the amount to be assessed either at the sum originally fixed or at such less sum as in their judgment shall be just, and such determination shall be final. The amount of benefit thus ascertained shall be assessed upon the owners or occupants of all the real estate in said assessment district which is not public property, and upon said companies, as follows: The assessing officers hereinafter referred to shall determine the amount of advantage acquired by each parcel of real estate not public property in said assessment district by reason of said separation of grades and the amount of advantage acquired by said street railroad company or by each of said companies, as the case may be, by reason of said separation of grades. They shall apportion and assess the total amount to be assessed upon all said lots and parcels of real estate in said district and upon said company or companies in proportion, as nearly as may be, to the relative amount of advantage by them so determined to be acquired by said several lots and parcels of land and by said company or companies. The amount thus apportioned and assessed to said company or companies they shall charge against it or them. The amount thus apportioned to said assessment district shall be assessed thereon, levied and collected in the same manner and by the same officers and proceedings, as near as

Railroad companies, et al., may show cause before council.

Council shall determine as to assessment.

Assessing officers shall determine amount of advantage.

Manner of levying and collecting amount.

may be, as is provided in the charter of the city for assessing, levying and collecting the expense of a public improvement when a street is graded.

Certified statement to be transmitted.

Clerk to make entry.

Clerk to send certificate.

Total assessment to be certified by clerk.

To receiver of taxes.

To township treasurer.

Proviso.

Amount of assessment shall be collected.

To whom paid.

Shall pay to company.

(392) § 4251. SEC. 23. A certified statement of the amount of the assessment against any street railroad company, shall be transmitted by said city assessing officers, to the clerk of the court in which said proceedings were had. Said clerk shall, on receiving such certified statement, make an entry thereof on the record of said proceedings, and such statement so entered shall operate as a payment pro rata of the amount of any award made to said company in said proceedings, and where such assessment was made by the officers of a city other than that in whose name said proceedings were instituted, shall operate as a payment pro rata of the portion of the total compensation awarded in said proceedings, assessed therein against the city by whose officer such certified statement was made and transmitted. Said clerk shall send a certificate to the county treasurer or city treasurer of the city or county in whose name said proceedings were instituted, as the case may be, in all cases, stating whether the amount of assessments against such company is less than the amount of compensation so awarded to it, or is equal thereto, or is greater than the amount of said award, and stating the amount of the excess or deficiency, if any, as the case may be. Said clerk shall certify the total of the assessments against any such company, where no award was made to said company in said proceedings, or the excess, if any, of said total of said assessments over the amount of such award, where such award was made:

(a) In cases where said proceedings were instituted in the name of any city, to the receiver of taxes of said city or other officer by whom general taxes are collected;

(b) In cases where said proceedings are instituted in the name of any county, to the township treasurer of the township in which said crossing, or the part of said crossing within said county is situate: Provided, That if said crossing, or the part thereof within said county lies in more than one township of said county, said certificate shall be made to the township treasurer of either of said townships;

(c) In cases where said proceedings are instituted in the name of any township, to the township treasurer of the township. The amount of the assessment so certified shall then be collected by the same officer, at the same time and in the same manner as general personal taxes are or may be collected, and shall, when collected by said collecting officers, be paid over to the treasurer of the city, county or township by which said proceedings were instituted, as the case may be, by whom it shall be placed to the credit of the fund created for the payment of the compensation on account of said changes of grade. Whether the amount of the assessments is greater than, equal to, or less than the amount of

the award to said company, the treasurer of the city, county or township in whose name the proceedings were instituted shall, upon receiving certificate thereof, make an entry to that effect in the proper record, and when the fund for payment of compensation is provided, shall pay to said company the excess only of its award over said assessment.

(393) § 4252. SEC. 24. The assessment roll containing said assessments on a city district, when ratified and confirmed by the common council, shall be prima facie evidence of the regularity and legality of all proceedings prior thereto and up to and including said confirmation, and all assessments therein contained shall be and continue a lien on the premises against which the same are assessed, until payment thereof. Such part of the compensation apportioned as above provided, to any city for payment as is not raised in the manner hereinbefore provided, and all that part of the compensation which is apportioned, as above provided, to any county or township, shall be assessed, levied and collected on all taxable property of said city, county or township, as the case may be, in the same manner as general taxes are assessed and collected.

Assessment roll shall be prima facie evidence, etc.

When assessed, levied and collected as general taxes.

(394) § 4253. SEC. 25. As soon as may be after any agreement made under the provisions of section two of this act becomes enforceable, and as soon as may be after the final confirmation of any verdict in judicial proceedings under the provisions of this act, each city, county and township, upon which, under the terms of such agreement, or of any settlement or compromise of damages made under the provisions of section three of this act, or of any such verdict, the payment of any sum or sums of money is charged, shall set apart and cause to be provided in its treasury, unless already provided, its proportion of the amount required to pay all such sums, and shall, in the resolution setting apart and providing said amount, direct its treasurer to pay to the persons respectively entitled to the money so provided, each his proportion thereof, as determined by said agreement, settlement, or verdict, except that in cases where the crossing is of either of the classes referred to in clauses (e) and (f) of section one of this act the proportions so provided by said body politic and corporate other than the one in whose name the said proceedings were instituted, less the amount of any assessments by any city made against any street railroad company or companies as hereinbefore provided, shall be paid over by the treasurers thereof, respectively, to the treasurer of said city, county or township in whose name the proceedings were instituted, to be by him credited to the funds provided for the payment of said awards of compensation and disbursed by him to the parties entitled to the said award. It shall be the duty of the treasurer securely to hold such money in the treasury for the purpose of paying said awards and to pay out the same to persons entitled thereto, ac-

Sums set apart for persons entitled to award.

Duty of treasurer.

Transfer
of funds.

according to the said verdict, on demand, and not to use or pay out said money for any other purposes whatever. Said cities, counties and townships may provide their respective proportions of said amount by borrowing from any other money or fund in their respective treasuries and repay such loan from the money raised to pay the compensation so awarded, when collected or otherwise, as they may provide. And may cause the whole or any part of the appropriation required to pay all such sums, to be made by issue of bonds in lieu of raising the same by taxation. Said bonds shall be issued in the name of the city, county or township in the same manner as are other city, county or township bonds, and shall be denominated "Grade separation bonds."

"Grade
separation
bonds."

Am. 1909, Act 268.

Making of sep-
aration not to
be delayed.

(395) § 4254. SEC. 26. The making of said separation of grades whether in any railroad or in any street or highway, and of all other changes necessary to carry out the plan set forth in the resolution or certificate provided for by section three, or in the report provided for in section nine, shall not be postponed or delayed on account of the non-payment of any of the sums so awarded as compensation, nor shall the payment of any of the sums so awarded as compensation be a condition precedent to the making of any said changes to carry out the said plan.

Separation,
how made.

(396) § 4255. SEC. 27. The separation of grades provided for either in the said agreement mentioned in section two or in the resolution, certificate or report attached to the petition provided for in section eleven as the case may be, shall be made and carried out in accordance with the plan, plat and profile, set forth in said agreement, resolution, certificate or report. All changes of grades in any railroad or railroads, and all changes in said railroad or railroads consequent on said separation of grades, shall be made and carried out by the railroad company or companies operating the same. When, according to said plan of separation of grades, the street or highway will cross the railroad by an overhead bridge, the frame work of that part of said bridge within the side lines of the right of way and all abutments and supports sustaining that part of said bridge, shall be built, maintained and kept in repair by the railroad company, or where such bridge crosses the right of way of more than one railroad company, by said companies. Where, according to said plan of separation of grades, the street or highway will pass under a railroad or railroads, the railroad bridge, its abutments and the sustaining walls along the highway within the side lines of its own right of way shall be built, maintained and kept in repair by each railroad company. The surface and approaches of such bridge over which the street or highway passes, and such public way under such railroad or railroads and the approaches thereto,

Changes of
grades.

Railroad
company to
build, etc.,
bridge, etc.

Surface, etc.,
construction,
etc., of.

shall be constructed, maintained and kept in repair by the township, county or city within which the same are situate, or in the case of line crossings, by the joint action and under the joint supervision of the representative board or officer of the county or township and of the persons or bodies in whom by the charter of the city, the power to contract for and supervise the payment of streets is vested, as the case may be. The expense of all work to be done by any railroad shall be paid by said railroad, or in case work is to be done by two or more railroads jointly the expense shall be shared equally among them. The expense of all work to be done by any city, county or township shall be paid by such city, county or township, or in case work is to be done by a city, and county or counties, township or townships jointly, the expense shall be shared equally among them. Such expense imposed on any city, county or township shall be provided for by taxation in like manner as its other expenses are provided for.

Am. 1909, Act 268.

(397) § 4256. SEC. 28. Said order of confirmation shall, after reciting the substance of the verdict, and declaring the same confirmed, provide that the several amounts therein assessed against the railroad company or companies and the several bodies politic and corporate who are parties to the proceedings shall be paid by them respectively within one year from the date of final confirmation, and that the change or changes of grade found to be necessary by said verdict shall be made, if not already made, by the parties on whom the duty of making them respectively is imposed, within such reasonable time as the court shall in said order determine, not exceeding one year from the date of said order. Said judgment shall have the force and effect of a decree in chancery and may be enforced by the court making the same in any manner provided for the enforcement of chancery decrees.

Am. Id.

(398) § 4257. SEC. 29. The officers, jurors and witnesses in any proceedings under this act shall be entitled to receive from the city, county or township instituting the proceedings, the same fees and compensation as are provided by law for similar services in an ordinary action at law in the circuit courts of the state.

(399) § 4258. SEC. 30. All the expenses and costs of proceedings under this act incurred by any municipality, county or township instituting the same, shall be paid out of the general fund, highway fund, or the fund provided for such purposes, as the case may be. It shall be lawful for the judge in any case to order the payment, by the city, county or township instituting the proceedings, to any respondent, of

such reasonable attorney fee as he may deem just, not exceeding twenty-five dollars, which may be taxed with the other costs.

When attorney may discontinue proceedings.

May move for a new trial or appeal.

What shall not be necessary.

In Detroit, city counselor shall perform the duties of city attorney.

(400) § 4259. SEC. 31. The city attorney or prosecuting attorney, as the case may be, may, by permission of the court, after a hearing by all parties interested, discontinue the proceedings, but not after a verdict shall have been rendered, but he may in behalf of petitioner move for a new trial or take an appeal to the supreme court, but in cases of appeal by the petitioner, no bonds shall be required of it, nor shall it be required to pay any fees to the clerk of the court in which such proceedings were instituted for services in relation to taking of said appeal.

(401) § 4260. SEC. 32. It shall not be necessary in any proceedings under this act to give evidence in making out the prima facie case, of the party instituting the proceedings, of the ownership of interest of any of the respondents in any of the lands described in said petition as damaged or affected by said changes of grades, but the averments of said petition as to such matters shall, unless evidence is put in by the respondents contradictory thereof, be taken as true.

(402) § 4261. SEC. 33. In the city of Detroit the city counselor or other officer who may be the head of the legal department of said city shall perform the duties required by this act to be performed by the city attorney, and wherever the term city attorney shall be used herein, it shall as to and in said city be deemed to mean the city counselor or other head of the legal department.

CHAPTER V.—CERTAIN POWERS, PRIVILEGES, OBLIGATIONS AND LIABILITIES.

SECTION I.—RAILROAD COMPANIES.

An Act to authorize railroad companies to convey their franchises and property under certain circumstances.

[Act 190, Laws of 1873.]

The People of the State of Michigan enact:

Sale of railroad franchises and property.

(403) § 6328. SECTION 1. That it shall be lawful for any railroad company in this state which shall have entered, in good faith, upon the work of constructing its road, and shall have become unable to complete the construction of the same or of any part thereof, to sell, and convey the whole or any part of its road so partially completed, together with the rights and franchises connected therewith, to any other

railroad company or corporation of this state not having the same terminal points and not being a competing line: **Pro-** Provido, vote necessary for sale.
vided, That at any general or special meeting duly called for that purpose the stockholders carrying [owning] two-thirds of the stock of said company shall consent thereto: **And pro-** Provido, liabilities of purchasers.
vided further, That the company or corporation so purchasing shall hold such property and franchises, subject to all the obligations and duties, and with all the rights and privileges prescribed by the general railroad law of this state.

Legal sale of uncompleted road.—Young v. T. & S. H. R. Co., 76 / 485. The sale is made subject to all the obligations and duties prescribed by the general railroad laws: and the state's lien for taxes is not cut off.—And. Gen. v. Railroad Co., 82 / 426. See C. & G. T. Ry. Co. v. Miller, 91 / 166.

(404) § 6329. **SEC. 2.** Such conveyance shall be executed Execution and record of conveyance.
 by the secretary of the company under its corporate seal, and there shall be attached thereto a copy of the resolution passed at the stockholders' meeting authorizing the same, which shall be certified to by the secretary of said company. Such conveyance, with said resolution, shall be recorded in the office of the register of deeds in every county in which the property so conveyed may be situated, and a copy thereof shall be filed in the office of the secretary of state.

(405) § 6330. **SEC. 3.** Nothing in this act contained Rights of creditors preserved.
 shall be construed as rendering valid any conveyance which shall in any manner interfere with the rights of creditors: **Provided,** That the company so buying such railroad shall Provido, sale, how void.
 complete the same within five years from the date of purchase, or said sale shall be void.

An Act to authorize any railroad company now organized or that may hereafter be organized under the laws of this state, to sell, lease and convey its property and franchises to any other railroad company, whether organized within or without this state; and to acquire by lease or purchase from the owner of any other railroad such road or any part or portion thereof, whether located within or without this state, together with the rights and franchises connected therewith; and to provide for securing payment therefor; and to repeal act number one hundred two of the session laws of eighteen hundred ninety-three.

[Act 30, P. A. 1901.]

The People of the State of Michigan enact:

(406) **SECTION 1.** It shall be lawful for any railroad com- May sell, lease or convey road, etc.
 pany organized, or that may be organized, under the laws of this state, to sell, lease and convey its road, together with the rights and franchises connected therewith, or any part or portion thereof, to any other railroad company, whether organized within or without this state; and to acquire by

Proviso.

Further
proviso.

lease or purchase from the owner of any other railroad such road, together with the rights and franchises connected therewith, or any part or portion thereof, whether located within or without this state; and for the railroad company so purchasing or leasing to acquire and use such road, rights and franchises by purchase of the stock, or otherwise, as may be agreed between the parties interested, said railroads not having the same terminal points, and not being competing lines: Provided, That the stockholders owning a majority of the stock of said companies shall consent thereto: And provided further, That the company so purchasing or leasing shall hold and operate such road and said property and franchises subject to all the duties and obligations, and with all the rights and privileges prescribed by the general railroad laws of this state.

Railroad leases.—M. C. R. Co. v. P. M. R. Co., 128 / 333; Thomson v. McMorran Milling Co., 132 / 598.

Purchasing
party may
issue bonds.

Proviso.

(407) SEC. 2. The railroad company purchasing or leasing by virtue of this act may issue its bonds, secured by trust deed or mortgage, upon its property, rights and franchises, including the property and rights thus acquired, to make payment therefor; and such trust deed or mortgage shall have the effect of a purchase-money security: Provided, That nothing herein contained shall prejudice the rights of pre-existing creditors of the corporation from which such property and rights are purchased or leased.

Sec. 3 repeals Act 102 of 1893 and "all acts and parts of acts in anywise contravening the provisions of this act."

An Act to permit foreign railroad companies to hold and own certain land in this state, to confirm conveyances of such land to other foreign railroad companies in certain conditions, and to authorize the recording of a copy of agreements by which such conveyances have been or may be hereafter made.

[Act 184, P. A. 1897.]

The People of the State of Michigan enact:

Foreign rail-
way com-
panies may
hold land
for station
purposes.

(408) § 6325. SECTION 1. That it shall be permissible for any foreign railway company which shall have heretofore purchased land in this state, or which may hereafter purchase land necessary and actually used for station and yard purposes, to be used to facilitate and accommodate its business of receiving and delivering passengers and freight that it may transport from and to this state, to hold and own such land and all buildings and other structures that it may place thereon, in like manner and effect as if such company

were duly incorporated under the laws of this state: Pro-
 vided, That said company shall hold such land and use the
 same subject to all the limitations, obligations and duties to
 the public and to individuals which are or at any time here-
 after may be imposed upon railway companies by the laws of
 this state.

Proviso as to
 limitations.

(409) § 6326. SEC. 2. When any foreign railway com-
 pany which has heretofore purchased land for the use spe-
 cified in the preceding section of this act, or may hereafter
 purchase land for such use, and its railroad and other prop-
 erty in the state or country of its organization, have subse-
 quently become merged or vested in any other foreign rail-
 way company, by virtue of a sale and conveyance thereof
 made in pursuance of judicial decree; or its railroad and
 other property situated in such foreign state or country has
 or shall have become vested in another foreign company by
 virtue of a formal written agreement made and executed in
 pursuance of the law of such foreign state or country, the
 deed of conveyance and said agreement shall be deemed ef-
 fective to transfer title to said land in this state pursuant
 to the terms thereof in that behalf; and when such transfer
 has been or shall be effected by written agreement a copy
 thereof duly certified as a correct and perfect copy by the
 secretary of the company acquiring the same, under the seal
 of the company, shall be entitled to record in the county
 where said land is situated, notwithstanding that the execu-
 tion of the agreement may not have been in conformity with
 the general statutory requirement for conveyance of land in
 this state.

When lands
 are transfer-
 red deeds to
 be deemed
 effective.

Certified
 copies en-
 titled to
 record.

An Act in relation to mortgages against preferred stock in, and the
 delivery of goods by, railway companies.

[Act 96, Laws of 1859.]

The People of the State of Michigan enact:

(410) § 6341. SECTION 1. That upon the foreclosure of
 any mortgage or pledge of the property and franchises of any
 railway corporation, if the railway track and its appurte-
 nances are sold at the sale thereunder, and if the purchaser
 or purchasers shall, either by purchase from said company or
 otherwise, provide suitable equipments for running said road,
 and performing in all respects the duties to the public by
 law incumbent upon said corporation, and shall transfer to
 said corporation again its railway track and appurtenances,
 and all and singular the equipments necessary to run the
 same, and perform all its duties to the public, and shall, under
 their hands and seals, and verified by their oaths; declare

Foreclosure
 and sale of
 railway fran-
 chises.

Purchasers
may organize
and issue
new stock.

Proviso,
limit of issue.

Cancellation
of old stock.

Prior liens not
impaired.

Preferred
stock, when
issuable.

that he or they, having become such purchaser or purchasers, are desirous of continuing to perform the duties and enjoying the franchises and immunities of said corporation, and state in said declaration, under oath, that they have so provided the means for continuing the same, and set forth the name which he or they desire said corporation to be thereafter called, and shall file said declaration with the secretary of state, together with a copy of the order confirming the sale to him or them and notify the attorney general, then such purchaser or purchasers shall be at liberty to issue, and themselves hold, new stock in said corporation to such an amount and of such denomination as they shall deem proper: Provided, That unless additional stock shall be in good faith subscribed by persons able fully to pay up the same, new stock to a greater amount shall not be issued than sufficient at par to represent the fair value of all the property and rights then owned by said corporation. When said new stock shall be issued, and the holders thereof shall proceed as they are hereby authorized to do, to elect officers for said corporation, and said officers shall duly qualify for the same, as by the charter required, the old officers of said company shall be superseded, and the old stock in said corporation shall be deemed forfeited, and may be canceled on the books of said corporation, and the new stockholders and officers shall, in the law, be deemed, and taken to be the stockholders and officers of said corporation, the charter and all laws appertaining thereto, continuing to be the charter and laws regulating and governing said corporation, except that it may be known and called, and sue and be sued, and may contract, and do all acts which in the law it could have done in its old name, in and by the name set forth in the declaration aforesaid. And the said corporation shall not be liable for any debts or obligations except those by it thereafter contracted. But no prior mortgage or lien shall be in any way affected by such proceeding, and all property whatsoever, if any, that shall not be sold, shall remain liable for all the debts of such corporation, and no liability of any corporator, director, or other person whatsoever, shall be in any wise lessened or affected by any proceeding or act authorized by this act.

(411) § 6342. SEC. 2. When it shall be necessary to make loans in order to meet the just liabilities, or to carry out the lawful objects and duties of any railroad corporation within this state, or, if any of its creditors, holding its bonds, or other obligation of indebtedness whatsoever, shall be willing to exchange the same for preferred or secured stock, it shall be lawful for any such corporation, a vote of a majority of the stockholders being first obtained therefor, to issue such stock, and to secure in any lawful mode the prescribed dividends thereon, and to make the same payable in preference to dividends upon the other stock of said corporation:

Provided, That no dividend shall be secured greater than the rate of eight per cent, unless all the stockholders shall vote therefor, and in no case greater than the rate of interest allowed by law at the time such stock shall be issued. Such preference may be full or partial, and subject to such conditions and terms as said corporation may deem proper; and such stock shall be redeemable and payable upon such terms and at such times as shall be provided in the resolution authorizing the issue thereof, but no such stock shall be sold at less than its par value.

Proviso,
dividends not
to exceed rate
of interest.

For section 3 of this act, which authorizes the personal delivery of goods, see section 642 of this compilation.

An Act to authorize any railroad company, who owns, has possession of and is operating a railroad constructed and equipped and whose railroad and railroad property and franchises are not mortgaged, to issue bonds and to secure the same by a mortgage on its property and franchises.

[Act 86, P. A. 1891.]

The People of the State of Michigan enact:

(412) § 6333. SECTION 1. That any railroad company who owns, has possession of and is operating a railroad constructed and equipped, and whose railroad and railroad property and franchises are not mortgaged, shall have the right to issue bonds and to mortgage its corporate property and franchises to secure the payment of the said bonds, and may issue such bonds and dispose of the same in such manner as shall be determined upon by a vote of the owners of the entire capital stock of the said company, at a meeting duly called for that purpose.

Authority to
bond, etc.

(413) § 6334. SEC. 2. It shall be lawful for the owners of the entire capital stock of any such railroad company, at a meeting duly called for that purpose, to determine the form of the bonds referred to in section one of this act, and the length of time they shall have to run and the rate of interest that they shall bear, not exceeding ten per cent; and also the form of the said mortgage or trust deed and what provisions the same shall contain, and the trustee or trustees to whom the same shall be made, and the rights, powers and duties of said trustee or trustees, and to make such provisions therein for the sale and transfer of the corporate property and franchises therein described as they shall deem best; and the sale and transfer of the said corporate property and franchises in accordance therewith shall be lawful and valid.

Owners to
determine
form, etc., of
bonds, etc.

Meetings of
stockhold-
ers to be
called, etc.

(414) § 6335. SEC. 3. Meetings of stockholders under the provisions of this act shall be called by mailing to each of said stockholders notice in writing of such meeting, stating the purpose for which the same is called, which notice shall be addressed to each of said stockholders at his last known postoffice address, with postage prepaid, at least thirty days prior to the day appointed for such meeting, and by publishing the said notice in a daily newspaper published in the city of Detroit, once a week for four weeks previous to the day appointed for the said meeting, and a meeting called in accordance with the provisions of this section shall be deemed to have been duly called in accordance with the provisions of this act.

An Act to regulate the issuance of stocks, bonds and other evidences of indebtedness by persons, corporations and associations owning, conducting or operating certain public utilities, and to provide a penalty for the violation thereof. (a)

[Act 144, P. A. 1909, as amended.]

The People of the State of Michigan enact:

Corporations
may issue
stock, bonds,
etc.

(415) SECTION 1. Any corporation or association except municipal corporations, organized and existing, or which may hereafter be organized or authorized to do business under the laws of this state, or any lessee or trustee thereof, or any person or persons owning, conducting, managing, operating or controlling any plant or equipment within this state used wholly or in part in the business of transmitting messages by telephone or telegraph, producing or furnishing heat, light, water or mechanical power to the public, directly or indirectly, and any railroad, interurban railroad or other common carrier may issue stocks, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of facilities or for the improvement or maintenance of service or for the discharge or lawful refunding of obligations: Provided, and not otherwise, That there shall have been secured from the Michigan railroad commission an order authorizing such issue and the amount thereof, and stating that in the opinion of the commission the use of the capital or property to be acquired to be secured by the issue of such stock, bonds, notes or other evidences of indebtedness, is reasonably required for the purposes of such person, corporation or association. Any such person, corporation or association desiring authority to issue stocks, bonds,

Proviso, order
from railroad
commission.

Application
for order.

notes or other evidences of indebtedness shall make written application therefor to the said commission in such form as the commission may require. After receiving such applica-^{Hearings etc.} tion, said commission may, for the purpose of enabling it to determine whether it should grant such authority, make such inquiry or investigation, hold such hearings and examine such witnesses, books, papers, documents or contracts as it may deem of importance in enabling it to reach a determination. If the applicant shall fail, neglect or refuse to furnish any or all of the information required by said commission, or if the said commission shall so direct, an ap-^{Appraisal of property.} praisal of the property of said applicant shall be made by a disinterested person or persons to be appointed by said commission and whose compensation shall be fixed by said commission, the entire expense of making such appraisal to be borne by said applicant. After said appraisal is made and filed with said commission and before any action is taken by said commission upon said application, the expenses of^{Expense of appraisal.} said appraisal as determined by said commission shall be paid by said applicant to said commission, which shall deposit the same in the treasury of the state to be credited to the general fund, taking the receipt of the treasurer therefor and filing the same in its office with said application. If^{Refusal to pay expenses.} the applicant shall refuse or neglect to pay the expense of said appraisal the commission shall dismiss such application and said commission may bring an action against said applicant in any court of competent jurisdiction in this state for the recovery of the expense of said appraisal. The expense of said appraisal shall be paid by the state treasurer upon the warrant of the auditor general to the persons certified by the commission to be entitled thereto. If from the application filed and such other information obtained from the investigation herein authorized, the said commission shall be satisfied that the funds derived from such issue of stocks, bonds or notes are to be applied to lawful purposes and that such issue and amount is essential to the successful carrying^{When commission to grant authority.} out of such purposes, then said commission shall grant authority to make the issue applied for, and in granting such authority, the said commission may impose as a condition of the grant such reasonable terms and conditions as to the commission may seem proper: ^{Proviso, issue of notes.} Provided, That any such person, corporation or association may issue notes for lawful purposes, payable at period of not more than twenty-four months, without authority from said commission; but no such notes shall in whole or in part, directly or indirectly, be refunded by any issue of stock or bonds or by any evidence of indebtedness running for more than twelve months without the consent of said commission: ^{Further proviso, application of act.} Provided further, That the provisions of this act shall apply to all stock, shares, bonds or notes issued to or taken by the incorporators or their agents, assigns or trustees of any such corporation or

Certiorari. association in the first instance. The supreme court upon petition of any person aggrieved may review by certiorari any final order of determination of the commission. The issuance of the writ shall not, however, unless specifically ordered by the court, operate as a stay of proceedings.

Am. 1911, Act 177; 1915, Act 259.

An electric power corporation, organized under the laws of Wisconsin, is required to have the issue and amount of its stock approved by the Michigan railroad commission before the secretary of state may issue thereto his certificate of authority to transact business in Michigan.—Peninsular Power Co. v. Secretary of State, 169 / 595.

Penalty. (416) SEC. 2. Any person, corporation or association neglecting or failing to comply with, or who shall violate the provisions of this act or fail to perform the conditions imposed by the commission as provided in section one of this act, shall be liable to a fine of not less than one thousand dollars nor more than five thousand dollars for each offense, which may be recovered in an action by the attorney general in the name of the people of the state of Michigan in any court of record, and when so collected shall be paid into the state treasury to the credit of the general fund.

Am. 1d.

Unauthorized
issue of
stock, etc.

(417) SEC. 3. Any officer, director, agent or employe of any person, corporation or association, who shall cause to be issued any stocks, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, or who shall in any way aid in the issue of such stocks, bonds, notes or other evidences of indebtedness, not authorized by the Michigan railroad commission, or under the terms and conditions imposed, or any officer, director, agent or employe of such person, corporation or association, who shall, after the issue of stocks, bonds, notes or other evidences of indebtedness, authorized by said commission upon certain terms and conditions, fail to comply with such terms and conditions so imposed, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison not less than one year nor more than five years.

Penalty.

Am. 1d.

Section 4 repeals contravening acts.

An Act to authorize existing railroad companies to aid by subscription of stock, guaranteeing of bonds, or making running connections with any road constructed or to be constructed, under the general laws of this state.

[Act 134, Laws of 1869.]

The People of the State of Michigan enact:

(418) § 6327. SECTION 1. That it shall be competent for any existing railroad company in this state to aid by subscription of stock, by guaranteeing bonds, or making running and business arrangements, or in any other form which may be deemed expedient by its board of directors, in the construction of any road, or part of a road constructing, or to be constructed under the general laws of this state, and any company organized under the general laws of this state may avail itself of such aid, and to make it available may enter into such agreements as shall be deemed expedient by the board of directors of said companies; and when any company organized under the general law shall be unable to finish, or equip and operate its said road, or any section thereof, it may make arrangements with any other railroad company to equip, operate, manage, and work such road, or section thereof, upon such terms as may be deemed just and fair, and for such length of time as may be agreed upon by the board of directors of the two companies.

Railroad companies may aid each other in equipping and operating roads.

An Act relative to the issuing of false, fraudulent and part paid shares of the stock of railroad companies, and to repeal sections four and five, of act number two hundred and twenty-nine, of the session laws of eighteen hundred and sixty-three.

[Act 289, Laws of 1865.]

The People of the State of Michigan enact:

(419) § 6344. SECTION 1. That it shall not be lawful for any railroad company existing by virtue of any of the laws of this state, nor for any officer of any such company, to sell, dispose of, or pledge any shares in the capital stock of such company, nor to issue certificates of shares in the capital stock of such company until the shares so sold, disposed of, or pledged, and the shares for which such certificates are to be issued shall have been fully paid, nor issue any stock or bonds except for money, labor or property actually received, and applied to the purpose for which such corporation was created; and all fictitious stock dividends and other fictitious increase of the capital stock or indebt-

Sale of part paid stock prohibited.

Penalty for
such sale.

edness of any such corporation shall be void; and if any officer or officers of any such company shall issue, sell, pledge, or dispose of any shares or certificates of shares of the capital stock of such company, in violation of the provisions of this act, such officer or officers so doing shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by law in case of issuing false or fraudulent railroad stocks. The provisions of this act shall apply as fully to the stocks and officers of consolidated railroad companies, as existing in whole or in part within this state, as to original unconsolidated companies existing as aforesaid.

Union City Lumber Co. v. Traverse City, Leelanau & Manistique R. Co.,
170 / 205.

Special annual report of
capital stock
actually disposed of.

(420) § 6345. SEC. 2. It is hereby made the duty of every such railroad company as aforesaid, to file with the secretary of state, in the month of July in each year, a special report and statement, sworn to by the president and treasurer of the company, setting forth explicitly the number of shares of capital stock actually issued, sold, pledged or disposed of by the company to the date of such report, and the amount of capital stock issued during the year last past, and the amount received therefor in money, and the amount received therefor, if any, in property and other effects.

Penalty for
neglect to
report.

(421) § 6346. SEC. 3. Any violation of the provisions of this act, or any neglect to comply with the requirements of this act, or the making of any false statement to the secretary of state in relation to any of the matters required by the preceding section to be reported to him, shall render the officers and directors of any such railroad company as aforesaid, guilty of any such violation or neglect, or making or permitting any such false statement, liable to the state for the penalties heretofore provided by law.

An Act to prohibit railroad companies from taking up their tracks, abandoning their stations, and failing to operate their roads in certain cases.

[Act 275, P. A. 1887, as amended.]

The People of the State of Michigan enact:

Unlawful to
take up, abandon,
etc., track, except
on decree of
court, etc.

(422) § 6347. SECTION 1. It shall be unlawful for any railroad company, organized under any law of this state, and whose road has been constructed wholly or in part by public aid or local subscription given as a bonus for such construction, having once constructed and put in operation the whole or any portion of said road, and located and opened

for business, stations and houses thereon, to thereafter take up, abandon or cease the operation of its said track, or any portion thereof or to close up and abandon its said stations and station houses, or to withdraw the agents therefrom, except upon the decree or order of the circuit court of the county or counties through which said road may run, and in which it is desired to take up and abandon such track, or to close up such station or stations and withdraw the agents therefrom, upon petition of the railroad company desiring to make such abandonment to be made to said court and after citation to the commissioner of railroads (railroad commission) and at least four weeks' publication of the pendency of the petition aforesaid in some newspaper published in the county or counties in which the track proposed to be abandoned runs, and if there be no such paper published in such county or counties then in some newspaper published in the city of Lansing, in said [this] state, and after making such citation and publication as herein provided, a hearing upon said petition shall be had in like manner as is provided by law for other chancery proceedings in this state, and at such hearing the said commissioner of railroads (railroad commission), either by the attorney general or the prosecuting attorney of the county in which said proceedings shall be had, or any citizen interested, either in person or by attorney, shall be entitled to appear and be heard in opposition to the granting of said petition: Provided, That no order or decree granting the prayer of any such petition shall be made by any circuit court except upon condition that such railroad company first pay back to each individual, private, or public corporation, or to the heirs, executors, administrators, successors or assigns of such individual or corporation, all moneys received by such railroad company from such individual or corporation as a bonus and interest thereon at the rate of six per cent per annum, from and after the time such bonus was granted, not to exceed five years: And provided further, That such railroad company first deed back to the person, persons or corporation from whom it was received or to his or its heirs, assigns, executors, administrators or successors, each and every tract, part or parcel of land or right of way, obtained from such person, persons or corporation.

Petition of
railroad
company.

Notice of
pendency of
petition, etc.

Proviso as to
repayment of
bonus, etc.

Further pro-
viso as to
deeding back
right of way.

In passing this act the legislature made the rule of law which before was a rule of equity.—*F. & P. M. R. Co. v. Rich*, 91/295. A railroad company cannot question the constitutionality of this act in a proceeding instituted by the company, under the act, to authorize such abandonment.—*Id.* 295. Upon the abandonment of the road the title to the land, taken for right of way and for other purposes, reverts to the original owners, and no re-conveyance or order of the court is necessary.—*Id.* 297. Defeasance clause in deed of right of way.—*Hickox v. Railway Co.*, 78/615. Abandonment a question of fact.—*Hickox v. Railway Co.*, 94/237. See *In re F. & P. M. R. Co.*, 105/289; *Henry v. Ry. Co.*, 116/314; *Williams v. Railroad Co.*, 116/392.

Company
violating act
liable in
damages, etc.

Proviso as to
logging or
ore roads.

Further
proviso.

(423) § 6348. SEC. 2. Any company violating any of the provisions of section one of this act shall be liable in damages to any individual company or corporation having contributed as a bonus either as public aid or private subscription to the construction of said railroad, whether such bonus was in the form of land, money, labor, buildings or material, in such sum or sums as they may be able to prove they will sustain or have sustained on account of such abandonment, and they may bring their action in any court of competent jurisdiction in this state. And no decree or order for a proposed abandonment shall take effect or be of any force until all awards of such contributors be first legally and fully settled and paid: Provided, That the provisions of this act shall not apply to any forest or ore roads constructed exclusively for the purpose of logging or mining: And provided further, That this act shall not apply to the abandonment by any railroad company of its tracks between two stations, only where provision is made for the reasonable accommodation of the traffic originating at or destined to such stations by another line of road operated by the same company.

Railroad Co. v. Rich, 91 / 294.—In re F. & P. M. R. Co., 105 / 289.

An Act to provide for the payment to railroad companies of certain moneys collected by the agent of the state from trespassers upon the lands of said companies.

[Act 127, P. A. 1875.]

The People of the State of Michigan enact:

State auditors
to audit and
allow moneys
upon proof
of collection
from tres-
passers, etc.

(424) § 1432. SECTION 1. That the board of state auditors be and are hereby directed to audit and allow to the several railroad companies of this state the amount of moneys collected, or which may hereafter be collected and paid into the state treasury (less the expenses incident to such collection) from trespassers upon lands which were granted by the United States to this state for railroad purposes, by act of June three, eighteen hundred and fifty-six, the title to which has become vested in such companies, upon proof satisfactory to said board, that such moneys were collected from trespasses actually committed upon the lands of such railroad companies, and that the title to such lands has actually become vested in the companies making application for such moneys.

How moneys
to be drawn.

(425) § 1433. SEC. 2. When such amount shall have been ascertained and audited, said board shall certify to the auditor general the amount thereof, who shall draw his war-

rant upon the state treasurer, payable to the order of the proper officer of such railroad companies, and the state treasurer shall pay the same out of the fund to which said moneys may have been credited: Provided, That such companies shall not be indebted to the state for specific state tax or otherwise.

An Act to authorize railroad companies to cut decayed or dangerous trees standing within a certain distance of either side of their track.

[Act 27, P. A. 1875.]

The People of the State of Michigan enact:

(426) § 6323. SECTION 1. That any railroad company owning, controlling, or operating any line or lines of railroad in this state, be and is hereby authorized and required to cut any tree or trees that are dangerous and liable to fall or blow over and obstruct such track.

Authority granted to cut dangerous trees.

Branches of trees standing upon adjoining land may be trimmed off up to the division fence line.—Hickey v. M. C. R. Co., 96/498.

An Act to fix the liability of railroad companies, as common carriers, in certain cases.

[Act 124, Laws of 1867.]

The People of the State of Michigan enact:

(427) § 5239. SECTION 1. That no railroad company shall be permitted to change or limit its common law liability as a common carrier, by any contract, or in any other manner, except by a written contract, none of which shall be printed, which shall be signed by the owner or shipper of the goods or property to be carried.

Common carriers, liability of railroad companies as.

This act was evidently designed not to enlarge the powers of railroad companies, but to impose restraints upon an existing authority to make contracts.—McMillan v. M. S. & N. I. R. R. Co., 16/110. The common law liability of common carriers not applying to cattle at all, unless a railroad company is made a common carrier of such property by statute or by holding itself out to the public as such, the transportation of live stock is not within the provisions of this statute.—M. S. & N. I. R. R. Co. v. McDonough, 21/200. As to the liability of railroad companies as common carriers, see section 157 ante, and notes.

(428) § 5240. SEC. 2. Nothing in this act shall be so construed as to interfere in any way with the right of railroad companies to collect or deliver freights from and to any of their depots or elsewhere; and said railroad companies shall, under this act, have the right to collect and deliver said

Reception and delivery of freight.

Proviso,
charges and
delivery.

property: Provided, That no additional charge shall be made therefor: Provided further, That nothing herein contained shall be so construed as to preclude any owner or shipper of any such goods, freight or property from hauling the same to or from any place or places connected with any railroad, where such property, freight or goods are deliverable.

An Act to prescribe the liability of common carrier railroad companies to their employes.

[Act 104, P. A. 1909.]

The People of the State of Michigan enact:

Liability of
railroad
companies.

(429) SECTION 1. Every common carrier railroad company in this state shall be liable to any of its employes, or, in case of his death, to his personal representative for the benefit of his widow and children, if any; if none, then for his parents; if none, then for his next of kin, for all damages which may result from the negligence of any such railroad company or from the negligence of any of its officers, agents or employes, or by reason of any defect or insufficiency due to the negligence of any such common carrier railroad company in its cars, engines, appliances, machinery, track, road bed, works, boats, wharves, coal docks or other equipment.

Ferguson v. L. S. & M. S. Ry. Co., 169 / 260. This act did not change or repeal the "survival act" (C. L. 1897, § 10117).—Habitz v. Wabash R. Co., 170 / 71. This act which abolishes the fellow-servant doctrine as to common carrier railroads and permits recovery if the negligence of plaintiff was of lesser degree than that of his co-employes, changes the common-law rules relating to contributory negligence and permits a recovery if plaintiff's fault was less than that of defendant's servants.—Bruce v. M. C. R. Co., 172 / 441. Street railways are within the provisions of this act.—Arends v. G. R. Ry. Co., 172 / 448. This act is constitutional.—Sonsmith v. P. M. R. Co., 173 / 57; Fernette v. P. M. R. Co., 175 / 653; Quick v. D. & M. Ry. Co., 175 / 676. It is not unconstitutional on the ground that a greater measure of damages obtains under it, as to railroad corporations in case of the death of an employee than if he survives.—Id. It is as much within the power of the legislature to alter the common-law rules concerning the risks the servant assumes and his contributory negligence as to abolish the fellow-servant rule.—Quick v. D. & M. Ry. Co., 175 / 676. It is not in harmony with the purpose of the statute to hold that the injured servant assumes the risk of the negligence of a co-employee.—Id. Under either federal or state statute, the liability of a common carrier to its injured employee rests upon a negligent act.—Hollingshead v. D., G. H. & M. Ry. Co., 181 / 547. See Gaines v. D., G. H. & M. Ry. Co., 181 / 376.

Contributory
negligence
not to bar
a recovery.

(430) SEC. 2. In all actions hereafter brought against any such common carrier railroad company under or by virtue of any of the provisions of this act to recover damages for personal injury to an employe, or where such injuries have resulted in his death, the fact that the employe may have been guilty of contributory negligence shall not bar a recovery: Provided, That the negligence of such employe was of a lesser degree than the negligence of such company,

Proviso.

its officers, agents or employes: Provided further, That no such employe who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier railroad company of any statute enacted for the safety of employes contributed to the injury of such employe, and such employe shall not be held to have assumed the risk of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employes contributed to the injury or death of such employe.

Bruce v. M. C. R. Co., 172 / 441; Sipes v. Starch Co., 137 / 258; Quick v. D. & M. Ry. Co., 175 / 676, 682.

(431) SEC. 3. The words "railroad company," as used in this act, shall be taken to embrace any company, association, corporation, or person managing, maintaining, operating, or in possession of a common carrier railroad in whole or in part within this state, whether as owner, contractor, lessee, mortgagee, trustee, assignee or receiver.

"Railroad company" defined.

(432) SEC. 4. No contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employe, nor the acceptance of any such insurance, relief benefit or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to, or death of such employe: Provided, however, That upon the trial of such action, the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit or indemnity that may have been paid to the injured employe, or, in case of his death, to his personal representative.

Employment, etc., contract of.

Proviso.

(433) SEC. 6. Nothing in this act shall be held to limit the duty of common carrier railroad companies, or impair the rights of their employes under existing laws of the state.

Rights not impaired.

Section 5 was repealed by the judicature act of 1915.

(434) SEC. 7. The provisions of this act shall not apply to employes working in shops or offices.

Not to apply to certain employes.

Ferguson v. L. S. & M. S. Ry. Co., 169 / 260.

An Act to authorize common carriers to sell perishable freight and animals in case the person entitled to the same fails to pay or tender the lawful charges against the same.

[Act 236, P. A. 1901.]

The People of the State of Michigan enact:

(435) SECTION 1. Whenever any common carrier shall have transported to the proper destination any animals, domestic or otherwise, or any perishable freight, and the person entitled to the same shall fail to pay or tender the lawful

Perishable freight, when carriers may sell.

Proviso.

Notices
of sales.

Proviso.

charges against the same, for a period of twenty-four hours after the arrival thereof at such destination, notice thereof to such consignee, by mail or otherwise, having been given, then such carrier may sell the same at public auction to the highest bidder after giving three days' notice of such sale: Provided, That where the freight consists of animals, domestic or otherwise, one week's notice shall be given and such carrier shall be liable only for the amount realized therefor at such sale, less the lawful charges aforesaid and the expenses of caring for such property to the time of sale. One copy of such notice shall be posted in a conspicuous place on or about the depot or station building of the carrier, where the property is located; one copy shall be posted on or about the postoffice nearest where the property is located; and one copy in some other conspicuous place. Such notice shall describe the property proposed to be sold, and shall state the time and place of the sale, and reason for such sale: Provided, That one notice shall be mailed to the last known postoffice address of the consignee and consignor.

An Act to provide for railroad companies issuing free transportation or reduced rate tickets to persons actually engaged in securing settlers for unimproved farm lands within the state of Michigan.

[Act 74, P. A. 1913.]

The People of the State of Michigan enact:

Free transportation,
when issued.

Proviso,
certificate.

Sworn
statement.

When certificate
rescinded.

(436) SECTION 1. Any railroad company may issue free transportation or reduced rate tickets to persons actually engaged for more than one-half of their time each year in the business of securing actual settlers for unimproved farm lands within the state of Michigan: Provided, That no transportation shall be issued to or used by any person until the railroad commission, upon application of such person and after such investigation as it may deem necessary, shall have determined that the person making the application is actually engaged in the business of securing actual settlers for unimproved farm lands within this state, and shall have issued to such applicant a certificate to that effect.

(437) SEC. 2. Any person holding a certificate as provided in section one of this act shall on or before the tenth day of each month file a sworn statement with the railroad commission, showing the total miles traveled, if any, upon the railroads of this state during the preceding calendar month.

(438) SEC. 3. Any person holding a certificate as provided in this act who shall fail to comply with any of its provisions, shall forfeit the right to the use of any transporta-

tion he may have, and the railroad commission shall forthwith rescind and cancel the certificate held by said person.

TRANSPORTATION OF DISCHARGED CONVICTS.

[Extract from P. A. 118 of 1893, as amended.]

(439) § 2141. SEC. 62. When any convict shall be discharged from prison by pardon or otherwise, the warden shall furnish such convict with clothing, if he be not already provided for, not exceeding ten dollars in value, and such sum of money, not less than five dollars nor exceeding ten dollars, as the warden may deem necessary and proper. Whenever any discharged convict shall have been convicted and sentenced from any other city or village than that in which the prison from which he is discharged is located, the warden shall purchase a railroad ticket to such city or village for the use of such discharged convict, or a railroad ticket to any other point in the state selected by such discharged convict where the cost of transportation does not exceed the amount required to carry such discharged convict to the point from which sentenced, the cost of such transportation to be paid out of the general fund of the state. Upon release such convict shall be conducted to the station of the railroad from which such transportation has been purchased, by an attendant of said prison, and placed upon the proper train of such railroad. The attendant shall thereupon deliver to the conductor of such train the ticket so purchased for the use of such convict. The conductor so receiving such ticket, if the place of destination of such convict shall be without the limits of the run of such conductor, shall deliver to such convict, upon reaching such limits, the unused portion of such ticket. It shall be the duty of every such released convict to continue to the place of destination as indicated upon such ticket and failure so to do shall constitute a misdemeanor and shall be punishable as such.

Am. 1913, Act 399.

An Act to secure the minority of stockholders, in corporations organized under general laws, the power of electing a representative membership in boards of directors.

[Act 112, P. A. 1885, as amended.]

The People of the State of Michigan enact:

(440) § 8553. SECTION 1. In all elections for directors of any corporation organized under any general law of this state, other than municipal, insurance, banking corporations,

Term.

Proviso.

Further
proviso.

building and loan associations, cooperative savings associations and summer resort associations, every stockholder shall have the right to vote in person or by proxy the number of shares of stock owned by him for as many persons as there may be directors to be elected, or to cumulate said shares and give one candidate as many votes as will equal the number of directors multiplied by the number of shares of his stock; or to distribute them on the same principle among as many candidates as he shall think fit. All such corporations shall elect their directors annually, and the entire number of directors shall be balloted for at one and the same time and not separately: Provided, That the by-laws of any such corporation shall not be so amended as to reduce the number of directors of such corporation in case the votes of a sufficient number of shares are recorded against such proposed amendment, which if cumulatively voted as herein provided would elect one or more directors, where the same number of shares if cumulatively voted would not be sufficient to elect the same number of directors of the reduced board: Provided further, That associations formed for social, yachting, hunting, boating, fishing and rowing purposes, under act number twenty-two of the public acts of eighteen hundred eighty-three, approved April ten, eighteen hundred eighty-three, entitled "An act to authorize the formation of clubs for social purposes," the same being sections seven thousand seven hundred thirty-three to seven thousand seven hundred thirty-nine, both inclusive, of the compiled laws of eighteen hundred ninety-seven, or under section seven thousand six hundred sixty-seven of the compiled laws of eighteen hundred ninety-seven, may elect a portion of their directors for a longer term than one year as may be provided in their by-laws.

Am. 1911, Act 268.

This act is valid under the reserved right of amendment in Const. (1850), xv, 1.—*Dusenbury v. Looker*, 110/58. The reserved right of amendment authorizes any reasonable amendment, regulating the mode of use and enjoyment of the franchise, which does not defeat or essentially impair its object, or take away property or rights which have become vested under a legitimate exercise of the powers granted.—*Att'y Gen. v. Looker*, 111/498. If this act ever applied to banks, it was repealed by the general banking law of 1887.—*Att'y Gen. v. Bridgman*, 134/379. It is not applicable to an election of managers of a limited partnership association organized under C. L. 1897, § § 6079-6089.—*Att'y Gen. v. Potter*, 138/387.

SECTION II.—STREET RAILWAY COMPANIES.

An Act providing for the conditional sale, lease, or hire of railroad and street railway equipment and rolling stock, and providing for the recording of the contract or agreement thereof.

[Act S1, P. A. 1893.]

The People of the State of Michigan enact:

(441) § 6336. SECTION 1. That in any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract, may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee: When purchase money fully paid title to pass. Provided, Leasing with purchase privilege. That no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice, unless: Proviso as to creditor, etc.

First, The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee or bailee, as the case may be, or duly proved, before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved; Instrument to be executed.

Second, Such instrument shall be filed for record in the office of the secretary of state of this commonwealth; Where filed.

Third, Each locomotive engine, or car so sold, leased or hired or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor, or bailor plainly marked on each side thereof, followed by the word "owner" or "lessor" or "bailor," as the case may be. Property sold or leased must bear name of owner.

Contract held invalid under this section.—Hogan v. United Railway, 140 / 105. Passing title.—Id., 148 / 284. Conditional sales, etc.—Id., 154 / 478. Construction of act.—Detroit Trust Co. v. D. F. & S. Ry., 159 / 442.

(442) § 6337. SEC. 2. The contracts herein authorized shall be indexed by the secretary of state in a book of records to be kept for that purpose; and on payment in full of the purchase money, and the performance of the terms and con- Secretary of state to index contract, etc.

ditions stipulated in any such contract, a declaration in writing to that effect shall be made by the vendor, lessor, or bailor, or his or its assignee, which declaration shall be made on the margin of the index of the contract, duly attested, or it may be made by a separate instrument, to be acknowledged by the vendor, lessor, or bailor, or his assignee, filed and indexed, and for such services the secretary of state shall be entitled to a fee of one dollar for indexing each of said contracts and each of said declarations, and a fee of one dollar for noting such declaration on the margin of the index, and twenty cents per folio for furnishing certified copies: Providing, That if said vendor, or lessor, or bailor, or his or its assignee fails or refuses to make such declaration in writing on the margin of the index of contracts that such purchase money has been paid in full within thirty days said vendor, lessor, or bailor, or his or its assignee shall be liable to a fine of not more than five hundred dollars.

Fee.

Proviso.

Former contracts not affected.

(443) § 6338. SEC. 3. This act shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to in the first section hereof, and any such contract heretofore made may, upon compliance with the provisions of this act, be recorded as herein provided.

An Act to provide for the purchase or condemnation of the franchise of plank or toll road companies by electric or street railroad companies.

[Act 67, P. A. 1891.]

The People of the State of Michigan enact:

Franchise may be acquired.

(444) § 6470. SECTION 1. That any street or electric railway company of this state may purchase all or any portion of the rights and franchise of any toll road company, in any of the streets, avenues or highways of this state, at a valuation to be agreed upon between the directors of the said electric or street railway companies and the board of directors of said toll or plank road company.

Railway Co. v. Judge, 95 / 319; Freud v. Railway Co., 133 / 419. An electric railway company may change the grade of a highway so that it can operate its line, without compensating the adjoining proprietors, when it does so with the consent of the highway authorities, and of a plank road company which maintains the road.—Austin v. D. Y. & A. A. Ry., 134 / 149. A landowner cannot compel an electric road to locate its tracks in the center of the highway.—Id.

In case of no agreement.

(445) § 6471. SEC. 2. In case no agreement can be reached for the purchase of the right of such toll road company, said electric or street railway company is authorized to condemn such rights and franchise of said toll or plank road company, in which condemnation such street or electric

railway company shall proceed as in the condemnation of lands or franchises for railroad purposes under chapter ninety-one of the third volume of Howell's annotated statutes, being chapter seventy-five of the compiled laws of one thousand eight hundred and seventy-one, and all acts amendatory thereto, so far as the same are applicable: Provided, Proviso. however, That said street or electric railway company shall only condemn that part of the franchise of said toll or plank road company as may lie between its old established road bed and the side line of the street, except where it may be necessary to cross the street or go where a toll house may happen to be located: Provided, That the provisions of this Proviso. act shall not be so construed as to [affect] effect the rights of abutting property owners or the rights of the public in such highways.

An Act authorizing street railway companies or any railroad company organized under the laws of this state to own, maintain and operate steamboats, barges or vessels.

[Act 156, P. A. 1905.]

The People of the State of Michigan enact:

(446) SECTION 1. Any street railway, or any railroad company, organized under the laws of this state, may own and operate, in connection with its railway lines, such number of steamboats, barges or vessels, as its traffic of passengers or freight shall render necessary to make complete its different routes. And it may own and operate such steamboats, barges and vessels beyond the boundary lines of the state of Michigan for the purpose of making connections with its lines in the carriage of passengers and freights. May own and operate steamboats, barges, etc. May operate outside the state.

(447) SEC. 2. Said companies shall operate such steamboats, barges or vessels subject to such restrictions as are now imposed on other corporations and private individuals owning and operating steamboats, barges and vessels. Restrictions.

An Act to authorize township boards to grant the right to use the highways, streets, alleys and other public places of any township for poles, wires, pipes or conduits, or tracks for railways, and to operate and maintain the same, and to authorize townships to grant public utility franchises, and to provide for the submission of such public utility franchise grants to the electors for confirmation.

[Act 266, P. A. 1909.]

The People of the State of Michigan enact:

(448) SECTION 1. The township board of any township may grant to any person, partnership, association or corporation the right to use the highways, streets, alleys, and other public places of the township to set poles, string wires, lay Township board may grant certain franchises.

pipes or conduits or to lay tracks for railways and to operate and maintain the same and the right to transact a local business in such township, subject to such reasonable regulations as said board shall prescribe from time to time.

Action, how confirmed.

(449) SEC. 2. After a franchise has been granted by a township board and accepted in writing by the grantee, the action of the board in granting the franchise shall be submitted to a vote of the electors of such township for confirmation at the next regular election.

Notice, clerk to give.

(450) SEC. 3. The township clerk, at least twenty days before the next regular election, shall give notice that the question of the confirmation of the granting of such franchise will be submitted to a vote of the electors by posting a written or printed notice in three or more public places in such township. Printed ballots shall be prepared by the township clerk and kept at the polling place for the use of the electors and shall be in substantially the following form:

Ballots, form of.

Confirming grant of franchise to.....
for the purpose of..... [] Yes.
Confirming grant of franchise to.....
for the purpose of..... [] No.

Special election may be held.

(451) SEC. 4. The grantee of such franchise may have the same submitted to a vote of the electors of the township at a special election duly called, to be held at a time to be fixed by said township board not more than sixty days after the acceptance of such franchise by the grantee: Provided, That the grantee shall file with the township clerk at the time of the acceptance of such franchise a demand in writing that the same be submitted to the electors at a special election, and shall at the same time pay the township board such a sum of money as shall be sufficient, in the opinion of said board, to defray the expense of said special election.

Proviso, demand.

Payment of expense.

When confirmed.

(452) SEC. 5. If a majority of the electors of such township voting upon the question shall vote in the affirmative such franchise shall be confirmed and shall be irrevocable, otherwise it shall not be confirmed.

CHAPTER VI.—LEGAL PROCEEDINGS BY AND AGAINST RAILROAD COMPANIES.

[Extract from Judicature Act of 1915, Chapter x.]

(453) SECTION 1. Actions shall be commenced and tried ^{Where to be commenced.} in the proper county as follows:

* * * *

3. Suits may be commenced against any street railway or ^{Railways, etc.} railroad company in any county where the principal office of such company within the state may be situated, or in any county traversed by a line of railroad, owned or operated by such company, or in any county in which such company shall be the owner or lessee of a right of way for a line of road: Provided, That if such line of road traverses the county of ^{Proviso, railroad in plaintiff's county.} the plaintiff's residence, suit shall be brought in such county.

This section supersedes C. L. § 10468.

For decisions on C. L. § 10468, relating to the commencement of suits against corporations, see the following:

Showen v. Kellogg Switchboard Co., 158/330; Sherrill v. Grand Trunk R. Co., 161/497; Arnold v. Huber Mfg. Co., 166/192; Pollock v. D. U. Ry., 168/583.

APPLICATION OF SECTION: This section applies only to domestic corporations.—G. T. Ry. Co. v. Judge, 106/249; Newell v. Railway Co., 19/335; Watson v. Judge, 24/38; Reath v. Telegraph Co., 89/22. And § 10022 is supplemental to this section and intended to facilitate service upon domestic corporations.—Id. Both of those sections apply to the service of process upon railroad companies, it being intended by this section to extend, rather than restrict, such service.—Turner v. Tunnel Co., 102/580; Dairy Co. v. Runnels, 96/111. Prior to the amendment of 1887 no substituted service of process could be made upon a domestic corporation in any county other than that in which its home office was located.—Dairy Co. v. Runnels, 96/111, citing Insurance Co. v. Judge, 23/492. Under this section, suits may be commenced by declaration against corporations.—Menominee v. Judge, 81/578. The legislature intended to place corporations upon the same footing as individuals, as respects service of process against them.—Potter v. Manufacturing Co., 79/209. Where acts for the incorporation of certain corporations contain certain specific provisions regulating the bringing of actions, such provisions must be considered exceptions to this section, if inconsistent.—Dewey v. Car & Mfg. Co., 42/399. See, also, as to service of notice in case of appeal from commissioners, directed by the probate judge.—Simpson v. Railroad Co., 38/626; Railroad Co. v. Railroad, 72/214. Service of process.—Moinet v. Burnham, Stoepel & Co., 143/489; Atwood v. S. Ste. Marie Light & Power Co., 148/224.

ATTACHMENT: By the amendment of 1887 a remedy by attachment was given against domestic corporations, other than railroad and navigation companies, in all cases in which the plaintiff resided in a county other than the home county of the corporation and in case attachment of property could be had.—Mich. Dairy Co. v. Runnels, 96/109.

SERVICE OF PROCESS.

[Extract from the Judicature Act of 1915, chapter xiii.]

(454) SEC. 30. Whenever it shall become necessary to ^{Service upon railway company.} serve any process, notice or writing upon any company or corporation, owning or operating any steam, electric or street railway, in the state of Michigan, it shall be sufficient to serve the same upon any station agent, or ticket agent at any sta-

Proviso,
additional
modes.

Further
proviso,
when not
upon con-
ductors.

tion or depot along the line, or at the end of the road of such company, or upon any conductor in charge of any train or car of such company along the line of, or at the end of the road of such company, and such service shall be deemed as good and effectual as if made on the officers, directors or other agents of such company: Provided, That the modes of service herein provided for, shall be in addition to those provided for in the preceding section: Provided further, That service shall not be made upon conductors of street cars in cities where the home office of the corporation is located.

This section supersedes Act 260, P. A. 1899, and Act 208, P. A. 1901.

For purposes of jurisdiction a street railway corporation is deemed a resident of any county where the road is operated or corporate powers exercised, and of each county where it has an office, agency or agent for service of process.—Pollock v. D. U. Ry., 168/581. Service of a declaration and rule to plead upon the station agent of a railroad corporation, after the appointment of receivers by a federal court and notice to the agent to continue his employment for the receivers as theretofore, is valid.—Ennest v. P. M. R. Co., 176/398.

SERVICE OF NOTICE UNDER HIGHWAY LAW.

[Extract from Act 283, P. A. 1909.]

CHAPTER I.

Notice to
occupant,
serving
of, etc.

(455) SEC. 3. In case of an application under the first subdivision of section one of this chapter, the commissioner shall, within five days after receiving the same, issue a written notice, stating the object of such application, and appointing a time and place of hearing, which notice shall be served by the commissioner or by some other competent person, on the owners or occupants of lands through or adjoining which it is proposed to lay out, alter or discontinue such road, either personally or by a copy left at the residence of each owner or occupant, at least ten days before the time of hearing; and if no person shall reside upon any such lands, and the owner thereof shall not reside in the county in which said lands are situated, such notice to owners of such non-resident land shall be served by posting up the same in three public places in the township ten days before the time of hearing. Notice shall be served upon railroad companies by leaving a copy thereof with the agent in charge of any ticket or freight office of the company operating such railroad on the line thereof.

On R. R.
companies.

Affidavit
attached
to notice.

(456) SEC. 4. Upon the service of the notice required by the last preceding section, and before any further proceedings shall be had, the commissioner, or other person by whom the service was made, shall make and annex to such notice, or a copy thereof, an affidavit stating the time and manner of service, whether personally or by posting, or both, and if upon a railroad company, the fact of such service and upon whom, and such notice and affidavit shall be attached to the application, and the whole shall be present with the commissioner at the time of hearing upon the application.

PUBLICATION AND SERVICE OF NOTICE: A delay of over a month after receiving the application is fatal to the proceedings.—Sharpshooters Ass'n v. High. Com'r, 34/36. Service on the attorney of a railroad company is not authorized by statute.—D. M. & T. R. R. Co. v. Detroit, 49/47. Service on freight agent.—Truax v. Sterling, 74/160. The return of service should show upon what particular persons the notice was served, and whether served personally or by copy left at residence; also should show the particular places where the notices were posted.—People v. Highway Commissioners, 14/528. Sufficiency of notice.—Weber v. Stagra, 75/32.

WHO ENTITLED TO NOTICE: All owners and occupants through whose lands the highway is proposed to be laid out are entitled to the statutory notice.—Names v. Highway Commissioner, 30/491; Sherman v. Peterson, 91/480. Where land has been occupied and held adversely for 18 years by one claiming to be the owner, it is not necessary to serve notice on others claiming an interest.—Nedow v. Porter, 122/456. A party who is not notified of highway proceedings can lose nothing by a failure to appeal to the township board.—Names v. Highway Commissioner, 30/491. Where a party appears without notice and proceeds without objection, want of notice is waived.—Sharpshooters Association v. Highway Commissioners, 34/36.

TEN DAYS NOTICE: All persons entitled to notice of the meeting to determine the necessity of laying out, altering or discontinuing a highway must have ten full days notice.—Saller v. Township Board, 67/422; Price v. Stagra, 68/17; Dixon v. Highway Commissioner, 75/225; Coquard v. Boehmer, 81/445; Cox v. Highway Commissioner, 83/193. And this excludes the day of service and the day of hearing.—Platt v. Highway Commissioners, 38/247.

PROOF OF NOTICE: Proceedings to lay out, alter or discontinue a highway will not be sustained unless the highway commissioner's report and the record shows that the statutory notice of the proceedings was given.—Van Auker v. Highway Commissioner, 27/414; Moetter v. Highway Commissioner, 39/726; Gray v. Highway Commissioners, 40/165; Nelsen v. Wakefield, 43/435; Blodgett v. Whaley, 47/469; Goss v. Highway Commissioner, 63/608. The recital in the determination of the board that the statutory notice was given is not sufficient: proof is not established from such recital.—Dupont v. High. Com'rs, 28/362. Posting in a public place.—Anderson v. LaGrange Township, 2/187.

ALTERING: There is nothing in the present law of this state forbidding the alteration of a highway on account of its long continued use.—Weber v. Ryers, 82/117.

PLACE OF HEARING: The failure of a highway commissioner to meet at the place appointed in his notice to land owners, to view the premises and ascertain and determine the necessity of laying out a highway, ousts him of jurisdiction.—Barlow v. High. Com'r, 39/726.

See notes to section 711 infra.

An Act to provide for prior liens against the property of railroad companies and street railway companies in certain cases.

[Act 110, P. A. 1899.]

The People of the State of Michigan enact:

(457) **SECTION 1.** That when any person shall have any claim for the labor of himself or any minor child against any railroad company or street railway company, organized and doing business under any of the laws of this state, and which claim shall be duly presented to the proper officer of said company, and shall remain unpaid for a period of ten days after such presentation, said claim shall constitute a lien upon all the property, both real and personal, of said corporation, and shall be a prior lien to any and all judgments or attachments which may be existing against said corporation, by reason of any other debt, claim or demand, than those claims or demands against said corporation for personal work or labor. All persons employed by said corporation shall

Labor claims against certain corporations to constitute a lien.

have the advantages of this act, in whatever capacity they may be employed.

Death or personal injury claims after judgment to constitute lien.

(458) SEC. 2. All claims arising out of the death or personal injury of any person, when such death or personal injury shall result from the negligence of any street railway company or steam railroad company, organized and doing business under the laws of this state, shall, after judgment is obtained therefor, against any such corporation, constitute a lien upon all of the assets of said corporation, and all of the property thereof, and all of its rights and franchises, and over any and all other judgments, executions or attachments levied upon said property, except such as may be issued in favor of persons having obtained judgments for personal work and labor of themselves or their minor children.

Duty of courts.

(459) SEC. 3. It shall be the duty of all courts of this state, in which proceedings may be pending, for the foreclosure of any mortgage, trust deed or other lien upon any of the property of any street railway company or steam railroad company, doing business in this state, to cause said company, before final decree is entered in said cause, to file with said court, through the register thereof, a statement of all claims and demands made against said company by any and all persons for personal work or labor, and for damages resulting from death or personal injuries, and which claim shall have arisen within six years prior to the date of filing the same with said court. And it shall be the duty of said court, upon the filing of the same, to notify any and all persons interested in said claims, or their attorneys, to be and appear before said court upon a certain day to present their said claims, and the proof thereof, when such claims are claims for personal work and labor, and to inform said court in case of claims for personal injury or death, whether it is the design of said claimant to prosecute the same to final judgment or not.

An Act to provide for the protection of laborers and persons furnishing material for the construction and repairing of railroads in this state.

[Act 100, Laws of 1871.]

The People of the State of Michigan enact:

Payment of laborers hired by contractors may be provided for in contract.

(460) § 5243. SECTION 1. That it shall be lawful for all railroad companies, when contracts are made by them with contractor or contractors, for work, labor, or materials to be used in repairing or constructing railroads, to provide in the contract or contracts with said contractor or contractors, for the payment of laborers and persons furnishing material to said contractors or sub-contractors to be used in said con-

tract, and if no such provision is made in said contract or contracts, it shall be lawful for said railroad companies to withhold payment until such laborers and persons furnishing material are paid; and it shall be the duty of such railroad companies, by agent or otherwise, at each pay-day on said road or roads, to see that all laborers and persons furnishing material employed by contractor or contractors, or sub-contractors, are paid before payment is made to said contractors: Provided, The provisions of this act shall not apply to any iron or other materials and property used in ironing and equipping said railroad: Provided further, That a bill of items of the material and labor furnished to said contractor or sub-contractors shall be furnished to the company through their agent, or otherwise, together with the amount claimed, prior to the usual pay-day of said company, when such claim shall be due, or in case the contractor or contractors are not then paid, then prior to the payment then due.

Proviso, exemptions as to material used.

Proviso, bill for materials and labor to be furnished company.

CONSTRUCTION OF ACT: Although remedial, this statute is in derogation of the common law and interferes with and seriously affects the contract relations of parties, and must be strictly construed, or at least so construed as not to cast additional burdens upon parties between whom and the plaintiff there is no privity of contract.—*Dudley v. T., A. A. & N. M. Ry. Co.*, 65/658-9; *C. & N. E. R. R. Co. v. Sturgis*, 44/540.

INTENT: The true intent and object of this act is to protect laborers and persons furnishing materials for the construction and repairs of railroads.—*Dudley v. T., A. A. & N. M. Ry. Co.*, 65/657. The design of the law appears to be to effect a statutory novation of the debt due by the company to the contractor and make it due and payable to the contractor's creditors.—*Id.* 659.

LABOR AND MATERIAL: The labor applies to manual labor of persons employed and does not extend to teams used upon the work. The material referred to is such material as enters into the construction or repairing of the railroad and does not apply to material used or supplied for any other purpose. Feed furnished for teams employed in working upon the road, clothing or board of men so employed, would not come within the language or meaning of the act, because such feed, board and clothing are not used in constructing or repairing the railroad.—*Dudley v. T., A. A. & N. M. Ry. Co.*, 65/657-8.

LIMIT OF PROTECTION: The extent to which protection is extended depends upon and is limited to the amount due from the railroad company to its contractor at the time the bill of items is furnished to the company. It is also limited to such labor and material as is performed and used in constructing or repairing the railroad.—*Dudley v. T., A. A. & N. M. Ry. Co.*, 65/657; *Quackenbush v. Ry. Co.*, 91/313. See also *Bottomley v. P. H. & N. W. Ry. Co.*, 44/542. The protection is confined to "laborers for and persons furnishing materials to contractors and sub-contractors." A distinction is clearly marked between those who furnish and those who contract for labor and materials. The law limits its protection to the former. But the labor done by a man's team may be fairly regarded as labor done by him within the meaning of the statute.—*C. & N. E. R. R. Co. v. Sturgis*, 44/540-41. This act does not apply to contractors or sub-contractors.—*Martin v. M. & O. R. R. Co.*, 62/458. See *Brockway v. Innes*, 39/47; *Peck v. Miller*, 39/594.

ASSIGNMENT OF CLAIMS: The claims protected by the statute are assignable and may be enforced by the assignee in the same manner and to the same extent as the assignor could have done.—*Dudley v. T., A. A. & N. M. Ry. Co.*, 65/659-60; *C. & N. E. R. R. Co. v. Sturgis*, 44/540. But orders on a merchant drawn by a contractor and given to the laborers do not operate as an assignment of the laborer's claim.—*Martin v. M. & O. R. R. Co.*, 62/458; *Dudley v. T., A. A. & N. M. Ry. Co.*, 65/655; *Beecher v. Dacey*, 45/92. Where a railroad contractor has assigned his contract to the superintendent of the company and the latter has assumed the debts to laborers, the company's liability, if any, for a labor debt does not rest on this act, but is at common law on a special contract.—*Bottomley v. P. H. & N. W. Ry. Co.*, 44/542.

DUTY OF COMPANY: This statute imposes a new duty upon the rail-

road company, not that it shall pay the claims of laborers and material-men on the failure or neglect of the contractors to do so, but the duty imposed is to retain in its custody the amount due from it to its contractors, not exceeding the amount of the claims furnished, until such contractors or sub-contractors pay such claims. It is in effect a garnishment or stop order of the amount due to the contractor.—Dudley v. T., A. A. & N. M. Ry. Co., 65 / 659.

DECLARATION: In suing a railroad company for a labor debt under this act the common counts in assumpsit with mere allusions to the statute and a statement of plaintiff's title by assignment is not enough. The existence of the state of facts upon which the statute bases the right of action must be averred.—C. & N. E. R. R. Co. v. Sturgis, 44 / 538.

GARNISHEE: The railway company, as garnishee defendant, has the right under this statute to withhold money for the protection of the labor and material men who hold claims.—Dawson v. R. R. Co., 97 / 37.

BILL OF ITEMS: The presentation of a bill of items is an essential prerequisite to the assertion of any claim under this statute.—Quackenbush v. C. & W. M. Ry. Co., 91 / 313; Martin v. M. & O. R. R. Co., 62 / 464; Dudley v. T., A. A. & N. M. Ry. Co., 65 / 658. As to the requisites of a bill of items, see Quackenbush v. Ry. Co., 91 / 314.

Action for recovering pay from companies.

(461) § 5244. SEC. 2. On compliance with the provisions of section one of this act, the persons performing the labor, or furnishing the materials, mentioned in said section one, shall have the right to collect pay for the same from said railroad companies by action, as in case of other claims against said railroad companies, if the said claim or claims are undisputed and acknowledged to be due from said contractor or sub-contractors.

Proceedings in case amount due is disputed.

(462) § 5245. SEC. 3. If the amount claimed to be due from the contractor or sub-contractors is disputed by them, then said company shall withhold the payment from both till the same has been adjudicated, as in other actions, before some court having jurisdiction of the amount in controversy, and judgment duly rendered, when the company shall pay over the amount of the judgment to the party recovering the same against said contractor or sub-contractors, provided the amount of said judgment is due to said contractor or contractors from said company; if not, then so much as is due on said contract.

An Act to provide for the inspection and examination by the attorney general of books, papers and documents in the custody or control of any railroad company.

[Act 160, P. A. 1905.]

The People of the State of Michigan enact:

Books subject to inspection of attorney general.

(463) SECTION 1. That whenever the state of Michigan, or any officer on its behalf, is either plaintiff or defendant in any action, suit or proceeding at law or in equity now or hereafter defended or prosecuted by any railroad company organized or existing by or under any law of this state, the books, papers and documents belonging to or in the custody or control of any such railroad company, whether plaintiff or defendant, or in the custody or control of its successor,

whether formed under section six thousand two hundred twenty-five of the compiled laws of eighteen hundred ninety-seven, or otherwise, shall so far as such inspection and examination is necessary to enable the attorney general either to plead or prepare for the trial or hearing of such suit, action or proceeding, be subject to the inspection and examination of the attorney general and of his assistants and clerks, when acting under his instructions. -

(464) SEC. 2. The right of the attorney general, and of his clerks and assistants as aforesaid, to such inspection and examination may be enforced by an order made in such action, suit or proceeding on the motion or petition of the attorney general, or by mandamus issued by any court of competent jurisdiction. How enforced.

(465) SEC. 3. It shall not be necessary in any proceeding for an order or for a mandamus, under this act, to specify in detail and with particularity, the books, papers and documents sought to be examined and inspected. It shall be sufficient in all cases to designate generally, such books, papers and documents. Not necessary to specify in detail.

(466) SEC. 4. It shall be no defense or answer to any motion or petition or to an application for a mandamus under this act, that the production of such books, papers and documents can be procured by subpoena duces tecum; or that the railway company having the custody or control of such books, papers or documents is willing to furnish copies, excerpts from or compilations of such books, papers or documents, or that such railway company against whom such order or mandamus is sought to be obtained, is not a party to such action, suit or proceeding. Subpoena duces tecum no defense.

(467) SEC. 5. The court making such order or allowing such mandamus shall provide for the protection of the rights of the parties concerned in the inspection and examination of the books, papers and documents under this act. Court to provide for protection of rights of parties.

(468) SEC. 6. Any notice of motion, petition or order to show cause why a mandamus shall not issue under this act may be served upon the general attorney, or upon any officer of such railroad company. Notice to show cause, etc., upon whom served.

An Act to provide for the institution of actions against the state by railroad companies created, and which have heretofore existed under special charters, to recover damages sustained by reason of, and resulting from, the repeal of the special charter under which such companies were created, organized, and existed prior to such repeal.

[Act 4, P. A. Ex. Sess., 1900.]

The People of the State of Michigan enact:-

(469) SECTION 1. Whenever the charter of any railroad company organized, created, or existing under and by virtue of the provisions of any special act enacted prior to 1850, When may institute proceedings for damages.

Action, where brought.

Process to be served upon governor.

which provides that the state shall make compensation for damages sustained in case of repeal, shall be withdrawn or revoked by the repeal of such special act, such railroad company may, within one year from and after the date that such repeal shall go into effect and not thereafter, institute an action of trespass on the case against the state of Michigan, in the circuit court for the county of Ingham, Kent or Wayne, for the recovery of any damages which it has sustained, and to which it is entitled by reason of such repeal of such special charter, if any damages be sustained. Process shall be served upon the governor, and the case shall proceed in accordance with, and be governed in all respects by, the law and practice governing similar actions between individuals in this state.

Damages recoverable.—M. C. R. R. Co. v. State of Michigan, 148 / 153.

Judgments, how paid.

Auditor general to issue warrants.

State treasurer to pay warrants.

(470) SEC. 2. Upon final judgment being rendered, the same may, upon application by such railroad company, be certified by the clerk, and under the seal of the court in which the same is entered or to which the same has been appealed or removed, to the auditor general; and he shall thereupon issue his warrant for one-third of said judgment with accrued interest; and during the next following year he shall issue his warrant for another one-third of said judgment with accrued interest; and during the next following year he shall issue his warrant for the balance of said judgment with accrued interest; unless provision for earlier payments, or an immediate satisfaction of said judgment shall be made by the legislature. Said warrants shall be paid by the state treasurer to the railroad company entitled thereto or to its assigns, out of the general fund. The auditor general shall add to and incorporate the amount paid each year on account of said judgment, in the next succeeding state tax, and the money collected therefrom shall be placed to the credit of the general fund to reimburse it for the moneys thus paid.

Sec. 3 repeals "all acts and parts of acts in any way inconsistent with the provisions of this act."

PROCEEDINGS AGAINST CORPORATIONS AS GARNISHEES IN CIRCUIT COURT.

[Extract from Judicature Act of 1915, chapter xxviii.]

Corporations, garnishment of.

Proviso, municipal corporations.

(471) SEC. 46. All corporations of whatsoever nature, may be served and proceeded against as garnishees in the same manner and with like effect as individuals under the provisions of this chapter and the rules of law relative to proceedings against corporations: Provided, That when a municipal corporation is proceeded against as provided for in this chapter, judgment shall have been obtained in a court of competent jurisdiction by the plaintiff against the principal defendant before garnishment proceedings shall be com-

menced against such municipal corporation: Provided further, That in all cases of foreign corporations, if the officer or agent served shall neglect or refuse to file disclosure to said writ, as hereinbefore in this chapter provided, the default of said foreign corporation may be entered as in other cases, and upon entry of judgment against the principal defendant, judgment may be entered in said garnishee proceedings against said foreign corporation for the amount thereof, including costs: Provided further, That no judgment on default shall be rendered against said foreign corporation until the expiration of sixty days after the entry of judgment against the principal defendant, and the plaintiff shall within twenty days after judgment against the principal defendant, serve notice by mail on the foreign corporation at its home office that judgment had been obtained against the principal defendant; and that at the expiration of sixty days from the date of said judgment application would be made for judgment against it, as hereinbefore provided. Said notice shall be substantially as follows:

Further
proviso,
foreign cor-
porations.

Further
proviso,
judgment
on default
against
foreign cor-
porations.

Form
of notice.

In the circuit court for the county of
....., plaintiff,
vs.
....., defendant.

....., garnishee defendant.
To said garnishee defendant:

Take notice, that on the.....day of Anno Domini judgment for the sum of dollars including costs, was entered in said court against the above named principal defendant, and at the expiration of sixty days from the entry of said judgment, application will be made to said court for the entry of judgment against you as garnishee defendant in said cause.

Yours, etc.,

.....,

Plaintiff's Attorney.

IN JUSTICE'S COURT.

[Extract from Judicature Act of 1915, chapter lxxvi.]

(472) SEC. 30. All corporations of whatsoever nature, whether foreign, domestic, municipal or otherwise, except counties, may be proceeded against as garnishees in the same manner and with like effect as individuals under the provisions of this chapter, and the rules of law regulating proceedings against corporations and the provisions of law regulating the service of summons from justice court upon such corporations in other cases, shall be applicable to the service of summons in garnishment cases, and such service may be made in the same or any adjoining county.

Proceedings
against cor-
porations.

Duty of
officer served,
etc.

(473) SEC. 31. It shall be the duty of the officer or person so served, or the proper officer of such corporation having knowledge of the facts, to appear before the justice at the return day of the summons and answer thereto, or to answer at his option in writing, verified by his oath before some person authorized to administer oaths and transmit the same by mail or otherwise to the justice issuing said summons, on or before the return day thereof, which shall be deemed a sufficient compliance with such summons, and all proceedings thereafter shall be the same as in garnishment cases against individuals.

When cor-
poration
deemed
indebted to
defendant.

(474) SEC. 32. If said corporation shall not so appear or so answer, if a judgment shall have been obtained against said principal defendant, and the time for taking an appeal therefrom shall have expired, and if no appeal shall have been taken, such corporation shall be held to be indebted to the defendant in the original suit to the amount of the judgment against the principal defendant, unless within three days after the return day of such summons, such corporation shall appear and show a sufficient reason to the satisfaction of the justice for having failed to answer such summons, and the justice shall thereupon on the third secular day render judgment against such corporation as against other garnishees, for the amount of such debt and with like effect; but on such cause being shown, such officer may make disclosure and be examined as other garnishees and proceedings thereafter shall be the same as though answer had been made within the time limited therefor. If judgment shall not have been rendered against the principal defendant, or if judgment shall have been rendered and the time for appeal shall not have expired, said garnishment case shall stand adjourned until the determination of the principal suit, and the proceedings thereafter shall be the same as in cases against individuals.

Judgment.

Disclosure, on
cause shown.

When
garnishment
adjourned.
Summons
against
municipality.

(475) SEC. 33. No summons in garnishment shall issue against a municipal corporation, under the provisions of the preceding section, until a judgment shall have been rendered against the defendant in the principal suit.

Appeal.

(476) SEC. 34. When any corporation shall wish to appeal, in cases where it has not answered as garnishee, it shall in addition to the other requirements of law, file with the justice a full and complete answer in writing as such garnishee, verified by the oath of an officer of the corporation having knowledge of the facts.

CHAPTER VII.—TAXATION -UNDER THE GENERAL TAX LAW.

[Extract from Act 206, P. A. 1893.]

(477) § 3830. SEC. 7. The following real property shall be exempt from taxation:

* * * * *

Eighth, The real property of corporations exempt under the laws of this state, by reason of paying specific taxes in lieu of all other taxes for the support of the state: Provided, That the track, right of way, depot grounds and buildings, machine shops, rolling stock and all other property necessarily used in operating any railroad in this state belonging to any railroad company, shall henceforth be made exempt from taxation for any purpose, except that the same shall be subject to special assessments for local improvements in cities and villages, and all lands owned or claimed by any such railroad company not adjoining the track of such company shall be subject to all taxes.

Corporations paying specific taxes.

Proviso as to railroads.

Am. 1909, Act 309; 1911, Act 174.

Property of a railroad company constituting parts of its terminal and depot grounds, necessarily used in the operation of the road, is exempt.—*Railway Co. v. Aud. Gen.*, 114/682. Sale of personal property of railroad company for taxes.—*C. & N. W. Ry. Co. v. Ellson*, 113/30. What property is exempt from general taxation.—*Aud. Gen. v. Railroad Co.*, 119/682. A railroad company will not render itself liable to general taxation with respect to its lands by permitting a lumber firm to occupy a portion of the same, without payment of rent and as a mere convenience in the shipment of the firm's lumber.—*Aud. Gen. v. F. & P. M. Ry. Co.*, 114/682. Property of a railroad company which is necessary to the enjoyment of its franchise cannot be sold under proceedings to collect an assessment for a municipal improvement.—*D. G. H. & M. Ry. Co. v. Grand Rapids*, 106/13, following *L. S. & M. S. R. Co. v. Grand Rapids*, 102/374. A section of the right of way of a railroad company, occupied by its tracks and used for no other purpose, cannot be assessed for improving a street crossing it, under a city charter requiring such assessments to be made according to benefits received.—*D. G. H. & M. Ry. Co. v. Grand Rapids*, 106/13; *G. R. & I. Ry. Co. v. Auditor General*, 144/77.

BOARD OF STATE TAX COMMISSIONERS.

[Sections 145-154 added to Act 206 of 1893.]

(478) SEC. 145. It shall be the duty of the governor on the first day of November, nineteen hundred five, to appoint three resident freeholders of this state, who shall be duly qualified electors thereof, and who shall hereafter constitute a board of state tax commissioners, with powers and duties as prescribed under this act, one of whom so appointed shall hold office until the first Wednesday in January, nineteen hundred nine, one of whom so appointed shall hold office until the first Wednesday in January, nineteen hundred eleven, and one of whom so appointed shall hold office until the first Wednesday in January, nineteen hundred thirteen, and until their successors shall have been appointed and

Board of state tax commissioners, when governor to appoint.

Term of office.

Successors,
how ap-
pointed.

Present com-
missioners,
when terms
to expire.

When ap-
pointments
to be made.

Vacancies,
how filled.

shall have qualified. Thereafter the successors of each member of said board of state tax commissioners shall be appointed by the governor by and with the advice and consent of the senate, and shall hold office for the term of six years and until their successors shall have been appointed and qualified. The persons who now constitute the board of state tax commissioners under appointments heretofore made shall continue to hold their office until the first day of November, nineteen hundred five, and until their successors shall have been appointed and qualified. All appointments which are provided to be made by the governor under this section of this act, except in the first instance, shall be made while the legislature is in session, and not at any other time, except in cases where a vacancy in office shall occur otherwise than by the expiration of the term of office of any member of said board. In case a vacancy in the office occurs otherwise than by expiration of the term, the governor shall have power to appoint to fill such vacancy at any time, and the person so appointed shall hold office until the next meeting of the legislature after such appointment, and no longer.

Am. 1905, Act 281.

Act No. 154 of 1899, adding sections 145-154 to the general tax law, creating the board of state tax commissioners and empowering it to revise local assessments, is not unconstitutional as an invasion of the right of local self-government (*State Tax Com'rs v. Quinn*, 125/128); nor is it open to the objection that it deprives the state board of equalization of constitutional powers; and its title is sufficient to warrant the inclusion of provisions authorizing a single member of the board to act in reviewing assessments and in making additions to the rolls.—*State Tax Com'rs v. Board of Assessors of Grand Rapids*, 124/491. As to effect of local charter provisions, see case last cited and (*Pt. Huron State Tax Com'rs v. Cady*, 124/683. The office of state tax commissioner not being a constitutional one, it is competent for the legislature to fix the term thereof.—*Att'y Gen. v. Oakman*, 126/717. The act of 1899 creating this board gave such board the power to add property to the tax roll for purposes of city taxation.—*Detroit United Ry. v. State Tax Assessors*, 136/96.

Secretary,
salary of.

Duties.

(479) SEC. 146. Said board shall elect a secretary at a salary not to exceed two thousand dollars per annum, and a chief clerk at a salary not to exceed one thousand five hundred dollars per annum. The persons so elected shall hold their offices during the pleasure of said board. The secretary shall keep a record of all the proceedings of said board, and shall perform such other duties as may be assigned to him by the board. The secretary and chief clerk shall devote all their time to the duties of their offices.

Am. 1905, Act 281; 1911, Act 17.

Members to
take oath.

Salaries and
expenses.

(480) SEC. 147. The members of said board, and the secretary and chief clerk thereof, shall take and subscribe the constitutional oath of office to be filed with the secretary of state. The members of said board shall receive an annual salary of two thousand five hundred dollars; and they shall also receive their necessary expenses in the performance of their duties, both to be audited and allowed by the board of state auditors, and paid monthly by the state treasurer out of the general fund.

Am. 1905, Act 281.

(481) SEC. 148. All regular sessions of said board shall be held at the office of said board at the capitol, to be furnished by the board of state auditors. Special meetings of said board may be held at any place most convenient. The said board and the members thereof or any duly authorized representative thereof, shall have access to all books, papers, documents, statements and accounts on file or of record in any of the departments of state, subject to the rules and regulations of the respective departments relative to the care of the public records. The said board and the members thereof or any duly authorized representatives thereof shall have like access to all books, papers, documents, statements and accounts on file or of record in counties, townships and municipalities. Said board shall have the right to subpoena witnesses upon a subpoena signed by the president of said board, and attested by the secretary thereof directed to such witnesses, and which subpoena may be served by any person authorized to serve subpoenas from courts of record in this state, and the attendance of witnesses may be compelled by attachment to be issued by any circuit court in the state upon proper showing that such witness has been properly subpoenaed and has refused to obey such subpoena. The person serving such subpoena shall receive the same compensation now allowed to sheriffs and other officers for serving subpoenas. Said board shall have power to examine witnesses under oath, said oath to be administered by any member of said board or by the secretary thereof. Said board or any duly authorized representative thereof shall have the right to examine books, papers or accounts of any corporation, firm or individual owning property liable to assessment for taxes, general or specific, under the laws of this state, and any officer or stockholder of any such corporation, any member of any such firm, or any person or persons who shall refuse to permit said inspection, or neglect or fail to appear before said board in response to its subpoena, or testify as provided for in this section, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the state prison for a period not exceeding two years, or by both such fine and imprisonment in the discretion of the court.

Sessions,
where held.

Access to
books, etc.

May subpoena
witnesses.

Examine
witnesses.

Misdemeanor,
penalty.

Am. 1905, Act 281; 1911, Act 17; 1913, Act 153.

(482) SEC. 149. Said board shall hold regular meetings on the first Tuesday of March, June, July, August, September and October in each year, and may hold adjourned sessions as may be deemed necessary by it for the proper performance of the duties devolving upon said board. The chairman may call special sessions of the board whenever he may deem it advisable so to do, and shall call such special sessions upon the written request of two members.

Regular
meetings,
when held.

Special
meetings.

Am. 1905, Act 281.

Duty of board. (483) SEC. 150. It shall be the duty of said board:

1. To have and exercise general supervision over the supervisors and other assessing officers of this state, and to take such measures as will secure the enforcement of the provisions of this act, to the end that all the properties of this state liable to assessment for taxation shall be placed upon the assessment rolls and assessed at their actual cash value;

2. To confer with and advise assessing officers as to their duties under this act, and to institute proper proceedings to enforce the penalties and liabilities provided by law for public officers, officers of corporations and individuals failing to comply with the provisions of this act; to prefer charges to the governor against assessing and taxation officers who violate the law or fail in the performance of their duties in reference to assessment and taxation, and in the execution of these powers the said board may call upon the attorney general or any prosecuting attorney in the state to assist said board;

3. To receive all complaints as to property liable to taxation that has not been assessed or that has been fraudulently or improperly assessed, and to investigate the same, and to take such proceedings as will correct the irregularity complained of, if any is found to exist;

4. To require from any officer in this state, on forms prescribed by said board of state tax commissioners such annual or other reports as shall enable said board of state tax commissioners to ascertain the assessed value and equalized values of all property listed for taxation throughout the state under this act, the amount of taxes assessed, collected and returned and such other matter as the board may require, to the end that it may have complete statistical information as to the practical operation of this act;

5. To furnish the state board of equalization at each session thereof an estimate of the actual cash value of the taxable property of each county in the state, and to meet with the state board of equalization when requested by said board to do so.

Am. 1905, Act 281; 1913, Act 153.

Report to
governor.

(484) SEC. 151. The board of state tax commissioners shall on or before the fifteenth day of December preceding each regular session of the legislature make a report to the governor of the state, setting forth the workings of said commission during the period covered by said report, and containing the findings and recommendations of said commission in relation to all matters of taxation. The board of state auditors shall cause to be printed as many copies thereof, not exceeding five thousand, as the said board shall deem necessary.

Added 1899, Act 154; Am. 1913, Act 153.

(485) SEC. 152. After the various assessment rolls required to be made under this act or under the provisions of any municipal charter shall have been passed upon by the several boards of review, and prior to the making and delivery of the tax rolls to the proper officer for collection of taxes, the said several assessment rolls shall be subject to inspection by said board of state tax commissioners or by any member or duly authorized representative thereof and in case it shall appear to said board after such investigation, or be made to appear to said board by written complaint of any taxpayer, that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law, the said board may issue an order directing the assessor whose assessments are to be reviewed to appear with his assessment roll and the sworn statements of the person or persons whose property or whose assessments are to be considered at a time and place to be stated in said order, said time to be not less than seven days from the date of the issuance of said order, and the place to be at the office of the board of supervisors at the county seat or at such other place in said county in which said roll was made as said board shall deem most convenient for the hearing herein provided. A copy of said order shall be published in at least one newspaper published in said county, if there be any, at least five days before the time at which said assessor is required to appear; and where practicable personal notice by mail shall be given prior to said hearing to all persons whose assessments are to be considered. A copy of said order shall also be served upon the supervisors or assessing officer in whose possession said roll shall be at least three days before he is required to appear with said roll. The said board, or any member thereof, shall appear at the time and place mentioned in said order, and the supervisor or assessing officer upon whom said notice shall have been served shall appear also with said assessment roll. The said board or any member thereof, as the case may be, shall then and there hear and determine as to the proper assessment of all property and persons mentioned in said notice, and all persons affected or liable to be affected by review of said assessments thus provided for may appear and be heard at said hearing. In case said board, or member thereof, who shall act in said review, shall determine that the assessments so reviewed are not assessed according to law, he or they shall, in a column provided for that purpose, place opposite said property the true and lawful assessment of the same. As to the property not upon the assessment roll, the said board, or member thereof acting in said review, shall place the same upon said assessment roll by proper description and shall place thereafter, in the proper column the true cash value of the same. Said board shall also spread upon said roll a certificate, signed by each member officiating at the re-

Rolls, inspection of.

When reviewed.

Notice.

Hearing, etc.

Action final.

view proceedings, showing the day and date on which said assessment roll was reviewed. For appearing with said roll as required herein the supervisor or assessing officer shall receive the same per diem as is received by him while in attendance at the meeting of the board of supervisors, to be presented to and paid by the proper officer of the municipality of which he is the assessing officer in the manner as his other compensation is paid. The action of said board or member done as provided in this act shall be final. When any property has been reviewed, assessed and valued by said board as herein authorized, such property shall not be assessed or valued at a lower figure within a period of three years, where the property remains substantially the same, without the written consent of said board.

Am. 1909, Act 8; 1911, Act 17; 1913, Act 153.

Where the state board has changed the valuations, the taxes should be assessed according to the valuations as so changed.—State Tax Com'rs v. Quinn, 125 / 128. Notice of general and special review.—Bialy v. Bay City, 139 / 495; Delray Land Co. v. Springwells Twp., 149 / 397; City of Port Huron v. Wright, 150 / 279.

Clerical assistance.

Compensation.

Proviso, expert assistance.

Proviso.

(486) SEC. 153. In addition to the secretary and chief clerk said board may employ such other clerical assistance as may be necessary and required to perform the duties imposed upon it by this act. The average compensation paid for such clerical assistance shall not exceed one thousand dollars per annum for each clerk employed: Provided, That said board may employ such expert assistance as may from time to time be necessary and essential to a proper exercise of the powers and performance of the duties prescribed in this act. The compensation for such expert assistance shall be fixed by said board at such amount as shall be approved by the board of state auditors: Provided, That the compensation herein authorized and all other necessary expenses incurred in carrying out the provisions of this act shall be allowed by the board of state auditors, upon proper vouchers approved by the president and secretary of the board and paid by the state treasurer out of the general fund.

Am. 1905, Act 281; 1911, Act 17.

As originally passed this act was silent as to the appointment of clerks and assistants, and it was held that, even if the board could appoint them, yet their compensation must be determined by the board of state auditors, subject to no review.—Warner v. Board of State Auditors, 128 / 500.

Property not assessed when listed.

Board to certify description of such property.

(487) SEC. 154. If it shall be made to appear to said board at any time that any property liable to taxation has not been assessed for any previous year as herein provided, the said board shall report the same to the proper assessing officer and the same shall be listed for taxation upon the next assessment roll that shall be made, and shall be valued as all other property. The said board shall further certify to the board of supervisors of the several counties at the October session thereof, next after said property shall be then listed for taxation, the description of said property and

the several years that the same has been liable for and escaped taxation, and said board of supervisors shall ascertain the rate of taxation, for said several years and shall order the taxes for said years to be spread against said property upon the valuation for the then current year, and the same shall be so spread in a column provided for that purpose, and it shall constitute a charge against the person and property, and be collected as other taxes: Provided further, That this provision shall not be deemed to relate back prior to the going into effect of this section: And provided further, That in case of change in ownership of the property omitted, said taxes shall not be spread against said property prior to the last change of ownership.

Supervisors to order taxes spread against property.

Am. 1905, Act 281.

An Act to provide for the assessment of the property, by whomsoever owned, operated or conducted, of railroad companies, union station and depot companies, telegraph companies, telephone companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight companies, and all other companies owning, leasing, running or operating any freight, stock, refrigerator, or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this state, and for the levy of taxes thereon by a state board of assessors, and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act.¹

[Act 282, P. A. 1905.]

The People of the State of Michigan enact:

(488) SECTION 1. The board of state tax commissioners, created under the laws of this state, together with the governor, shall ex officio, constitute a state board of assessors, one of whom shall be elected chairman of said board. The secretary of the board of state tax commissioners shall be ex officio secretary of the state board of assessors without extra compensation, and shall keep a record of all its proceedings in addition to such other duties as may be required of him by said board, and shall devote his whole time to the duties of his office. In addition to the secretary, said board may employ such other clerical assistance as may be necessary and required to perform the duties imposed upon it by this act.

Board of assessors, who to constitute.

Duties of secretary.

Clerical assistance.

Am. 1909, Act 49.

This act supersedes Act No. 173 of 1901, as amended by Act No. 45 of 1903, on the same subject.

See Att'y Gen. v. State Bd. of Assessors, 143 / 73.

¹Title amended by Act No. 49 of 1909.

Compensation of clerks.	(489) SEC. 2. Provided, That the compensation paid for such clerical assistance shall not in any case exceed one thousand dollars for each person employed, per annum: Provided further, That said board may employ such other assistance as may be necessary, with the consent of the governor and the board of state auditors. The compensation of the said secretary and clerks, and all other necessary expenses incurred in carrying out the provisions of this act, shall be allowed by the board of state auditors upon proper vouchers approved by the chairman and secretary of the board, and paid by the state treasurer out of the general fund.
Proviso as to other assistance.	
Salaries and expenses, how paid.	
Board to have access to public records, etc.	(490) SEC. 3. Said board shall have access to all books, papers, documents, statements and accounts, on file or of record in any of the departments of state, subject to the rules and regulations of the respective departments relative to the care of public records. It shall have like access to all books, papers, documents, statements and accounts, on file or of record in counties, townships and municipalities. It shall have the right to subpœna witnesses, upon a subpœna signed by the chairman of said board and attested by the secretary thereof, delivered to such witnesses, which subpœnas may be served by any person authorized to serve subpœnas from courts of record in this state, and the attendance of witnesses may be compelled by attachment, to be issued by any circuit court in this state, upon proper showing that such witness has been properly subpœnæd, and has refused to obey such subpœna. The person appearing in response to such subpoena shall receive like compensation as is allowed by the statutes of this state to witnesses in the circuit court, to be allowed by the board of state auditors upon the presentation of a copy of such subpœna, with the number of days' service and mileage endorsed thereon and approved by a member of said board of assessors, or the secretary thereof. The person serving such subpœna shall receive the same compensation now allowed to sheriffs or other officers for serving subpœnas. Said board shall have power to examine witnesses under oath, said oath to be administered by any member of the board, or by the secretary thereof. It shall have the right to inspect and examine the books, papers or accounts of any corporation, firm or individual owning property to be assessed by said board, and if such corporation, firm or individual refuse to permit said inspection and examination, or neglect or fail to appear before said board in response to its subpœna, said corporation, firm or individual shall, for each such refusal, neglect or failure, forfeit the sum of five hundred dollars to the state, the sum so forfeited to be recovered in a proper action brought in the name of the people of the state of Michigan, in any court of competent jurisdiction.
May subpoena witnesses and compel attendance.	
Compensation of witnesses.	
Fees for serving subpoena.	
Examination of witnesses, books, accounts, etc.	
Penalty for refusal to permit inspection of books, etc., failure to appear.	

(491) SEC. 4. It shall be the duty of said board to make an annual assessment upon an assessment roll, to be prepared by said board, of the property, by whomsoever owned, operated or conducted, and having a situs in this state as hereinafter defined, of railroad companies, union station and depot companies, telegraph companies, telephone companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies, and all other companies owning, leasing, running or operating any freight, stock, refrigerator, or any other cars not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this state: Provided, That the property of telegraph and telephone companies whose gross receipts within this state for the year ending June thirty do not exceed five hundred dollars shall be exempt from taxation. All telegraph and telephone companies doing business in this state shall make the report required by section six of this act to the state board of assessors: Provided, That such report for the year nineteen hundred nine shall be made and filed with said board on or before the first day of November, nineteen hundred nine.

Annual assessment of railroad and like property by board.

Proviso.

Proviso, as to filing report.

Am. 1909, Act 49.

(492) SEC. 5. The term property, as used in this act, shall be deemed to include all property, real or personal, belonging to the persons, corporations, companies, copartnerships and associations subject to taxation under this act, including the right of way, road bed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph and telephone poles, wires, conduits, switchboards, and all other property used in carrying on their business and owned by them respectively, and all other real and personal property, and all franchises, said franchises not to be directly assessed, but to be taken into consideration in determining the value of the other property: Provided, however, That this definition shall not include, apply to, or subject to taxation, such real estate as is owned and can be conveyed by such persons, corporations, companies, copartnerships and associations under the laws of this state which is not actually occupied in the exercise of their franchises, or in use in the proper operation and conduct of their business; but such real estate so excepted shall be liable to taxation in the same manner and for the same purposes and to the same extent and subject to the same conditions and limitations as to the collection and return of taxes thereon as is other real estate in the several townships or municipalities in which the same may be situated. The term company, corporation, copartnership, association, or person, wherever used in this act, shall apply to and be construed as referring respectively to any railroad

Term "property," what to include.

Proviso, definition not to include certain property.

Word "company" how construed.

Term, "property having a situs in this state," what to include.

company, union station and depot company, telegraph company, telephone company, sleeping car company, express company, car loaning company, stock car company, refrigerator or fast freight line company, and any other companies owning, leasing, running or operating any freight, stock, refrigerator, or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this state; and to any firm, joint stock association, copartnership, corporation, or other association or person, engaged in carrying on any business, the property of which is subject to taxation under this act. The term "property having a situs in this state," shall include all the property, real and personal, of the persons, corporations, companies, copartnerships and associations enumerated in this act, owned, used and occupied by them within the limits of this state, and also such proportion of their rolling stock, cars and other property as is used partly within and partly without this state, as herein provided to be determined.

- Am. Id.

Annual statement.

(493) SEC. 6. The several corporations, persons, copartnerships, companies and associations whose property is subject to assessment and taxation under the provisions of this act shall, annually, between the first day of July and the fifteenth day of September in each year, under oath of the president, secretary, superintendent, or chief officer of such corporation, company or association, or of the person or persons owning such property, make and file with the state board of assessors, in such form as said board may provide, upon blanks to be furnished by said board, a statement containing the following facts: The blanks furnished to railroad and union station and depot companies, telegraph and telephone companies, shall provide for the following information:

Statement, what to contain.

First, The name of the company;

Second, The nature of the company, and under the laws of what state or country organized;

Third, The location of its principal office;

Fourth, The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth, The name and postoffice address of the chief officer or managing agent of the company in Michigan;

Sixth, The number of shares of capital stock;

Seventh, The par value and market value, or, if there be no market value, the actual value, of the shares of stock on the thirtieth day of June of the year in which the report is made;

Eighth, A detailed statement of the real estate owned by the company in Michigan, where situate, and the value thereof;

Ninth, A detailed statement of the personal property, including moneys and credits owned by the company in Michigan on the thirtieth day of June in the year in which the report is made, where situate and the value thereof;

Tenth, The total value of the real estate owned by the company outside of Michigan;

Eleventh, The total value of the personal property of the company situate outside of Michigan;

Twelfth, The whole length of their lines, and the length of so much of their lines as is within, or is without Michigan, which lines shall include what said railroad companies, union station and depot companies, telegraph companies, and telephone companies, control or use as owners, lessees or otherwise;

Thirteenth, A statement of the entire gross receipts of the companies, from whatever source derived, for the year ending the thirtieth day of June in the year for which the report is made;

Fourteenth, Such other facts and information as said board may require, in the form of returns prescribed by it.

The blanks furnished to express companies shall provide for the following information: Express companies.

First, The name of the company;

Second, The nature of the company, under the laws of what state or country organized;

Third, The location of its principal office;

Fourth, The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth, The name and postoffice address of the chief engineer or managing agent of the company in the state of Michigan;

Sixth, The number of shares of capital stock, (a) authorized, (b) issued;

Seventh, The par and market value, or if there be no market value, the actual value of the shares of stock, together with the total amount of bonded indebtedness, on the thirtieth day of June of the year for which the report is made;

Eighth, The situation, income and value in detail of its real estate in this state;

Ninth, The total income from and cash value of all its real estate situated outside of this state;

Tenth, A full and correct inventory, at the true cash value, of its personal property, including moneys and credits, within this state;

Eleventh, The true cash value of all its personal property, including money and credits, without this state;

Twelfth, The whole length and names of railroad lines and water and stage routes over which it did business, and separately in detail, the portions of such lines and routes within this state, and the portions of such routes over navigable waters of the United States within this state;

Thirteenth, Such other facts and information as may be deemed necessary by the state board of assessors, or any member thereof, to the proper assessment of the property of such companies.

Car loan-
ing, stock
car, etc.,
companies.

The blanks furnished car loaning, stock car, refrigerator and fast freight line companies, and other car companies, and other companies owning, leasing or operating any cars not the property of railroad companies, upon railroads, shall provide for the following information:

First, The name of the company;

Second, The nature of the business of said company, and under the laws of what state or country organized;

Third, The location of its principal office;

Fourth, The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth, The location of its principal office in the state of Michigan, together with the name and address of the chief officer or managing agent of the company in Michigan;

Sixth, The total number of cars and rolling stock of any such company, run over or operated upon, any line or lines of railroad within this state each day during the entire year preceding the date of making and filing such report;

Seventh, The cost of construction of each of said cars;

Eighth, The length of time the same have been in service;

Ninth, The cash value of each of said cars so operated and run in this state, at the time of making and filing such report;

Tenth, And such other and additional information as may be deemed necessary by said board, or any member thereof, to the proper assessment of the cars of such company in this state in accordance with the provisions of this act and to the performance of the duty imposed upon it hereby.

Am. Id.

P. M. R. Co. v. K., L. S. & C. Ry. Co., 15S / 41.

SLEEPING CAR COMPANIES.

Sleeping car
companies,
what deemed.

(494) SEC. 7. Every joint stock association, company, co-partnership, or association incorporated or acting under the laws of this or any other state, or of any foreign nation, and conveying to, from, through, in or across this state or any part thereof, passengers or travelers, in palace cars, drawing room cars, sleeping cars or tourist cars, under any contract, express or implied, with any railroad company, or the managers, lessees, agents or receivers thereof, shall be deemed and held to be a sleeping car company, for the pur-

poses of this act; and every such sleeping car company doing business in this state shall annually, between the first day of July and the thirty-first day of August make out and deliver to the state board of assessors, a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the thirtieth of June next preceding, showing:

Annual statement, when filed.

First, The total capital stock of such association, company, co-partnership, or corporation invested in palace cars, drawing room cars, sleeping cars and tourist cars;

Statement, what to show.

Second, The number of shares of capital stock issued and outstanding, and the par or face value of each share, representing its palace cars, drawing room cars, sleeping cars and tourist cars;

Third, Its principal place of business;

Fourth, The market value of said shares and stock on the thirtieth of June next preceding, and if such shares have no market value, then the actual value thereof;

Fifth, All mortgages and where recorded, and the names and residences of the holders of the same, together with the franchises and amounts thereof, upon its palace cars, drawing room cars, sleeping cars and tourist cars.

Sixth, (a) The total length of the main lines of all the railroad companies over which said cars are run; (b) The total length of so much of the main line of the railroad companies over which said cars are run as is outside of the state of Michigan; (c) The length of the main lines of said railroad companies over which said cars are run within each of the counties and townships within the state of Michigan:

Provided, That where the railroads over which said lines have double tracks, or a greater number of tracks than a single track, the statement shall only give the mileage as though such tracks were but a single track; and in case the state board of assessors shall require it, such statement shall show the number of miles of each or any particular railroad system or division within this state in detail. Upon the filing of such statements the state board of assessors shall examine them, and each of them, and if it shall deem the same insufficient, or in case it shall deem that other information is requisite, it shall require such officer to make such other and further statements relative to the information required by this act, as said state board of assessors may call for. In determining the value of the personal property of any sleeping car company as herein defined subject to assessment and taxation in this state, the state board of assessors shall first ascertain the total value of the palace cars, drawing room cars, sleeping room cars and tourist cars of such sleeping car company; such amount shall be taken and considered as the aggregate value of the personal property of said sleeping car company invested in and devoted to the sleeping car feature of its business. The board shall then multiply the

Proviso as to double track lines, etc.

Board may require further information.

Value of property, how determined.

amount thus obtained by the number of miles of railroad main track over which such cars were used within the state of Michigan, and shall then divide the amount thus obtained by the number of miles of railroad track over which such cars are used both within and without this state, and the quotient thus obtained shall be taken and considered as the true cash value of the personal property of such sleeping car company, subject to assessment and taxation within the state of Michigan. The said amount shall thereupon be assessed and taxed, and the taxes collected, in all respects in accordance with the existing laws now in force for the taxation of the personal property of other companies and corporations which are assessed by the state board of assessors of the state of Michigan.

Amount
assessed.

Blanks fur-
nished on
application.

Proviso, as
to reports.

Penalty for
neglect or
refusal to
report.

Proviso.

(495) SEC. 8. Blanks for making the statements provided for in sections six and seven shall be furnished to such companies on making application to said board: Provided, That the reports hereby provided for shall not in any way relieve any of said companies from making the reports now required to be made to other state officers. In case any company fails or refuses to make the statement required by this act, or refuses to furnish any information requested, the board shall inform itself as best it may on the matters necessary to be known, in order to discharge its duties with respect to the assessment of the property of such companies. Any company which shall refuse or neglect to make the report required by this act or any part thereof, within the time specified, shall be subject to a penalty of five hundred dollars for each day of the continuance of such neglect or refusal to file said report, to be recovered in a proper action brought in the name of the people of the state of Michigan in any court of competent jurisdiction: Provided, That when any company shall show to the satisfaction of said board that it cannot furnish any of the information requested, said board may excuse said company from furnishing such information.

Am. 1909, Act 49.

Assessment
roll, when
prepared.

Board may
inspect prop-
erty, etc., to
arrive at cash
value.

(496) SEC. 9. Subsequent to the filing of the reports required in the preceding sections, and prior to the fifteenth day of January in each year, it shall be the duty of the state board of assessors to prepare an assessment roll as provided in section four of this act, upon which they shall assess, at the true cash value, on the thirtieth day of June next preceding the time of making said assessment, all the property of the companies herein enumerated, subject to taxation under this act, which said assessments shall not be final until reviewed as hereinafter provided. For the purpose of arriving at the amount and character and true cash value of the property belonging to said companies as appearing upon the assessment roll for the purpose of assessment and taxa-

tion, the said board may personally inspect the property belonging to said companies, and may take into consideration the reports filed under this act, the reports and returns of said companies filed in the office of any officer of this state, and such other evidence or information as may be obtainable or possessed by said board, bearing thereon. In determining the true cash value of the property of each railroad and union station and depot company which owns, leases, operates or uses lines partly within or partly without this state, the said board shall be guided, in ascertaining the property subject to taxation in Michigan, by the proportion which the number of miles of main track controlled or used by said company as owner, lessee or otherwise, within the state of Michigan, bears to the entire mileage of main track controlled or used by said company as owner, lessee or otherwise, both within and without this state. In determining the true cash value of the property of each telegraph company and telephone company, which owns, leases, operates or uses lines partly within and partly without this state, the said board shall be guided, in ascertaining the property subject to taxation in Michigan, by the proportion which the number of miles of telegraph or telephone lines controlled or used by said company as owner, lessee or otherwise, within the state of Michigan, bears to the entire mileage of telegraph or telephone lines controlled or used by said company, as owner, lessee or otherwise, both within and without this state. In determining the true cash value of the property of express companies, they shall ascertain and determine the actual value in money of the entire amount of the capital stock and bonded indebtedness of such express company. From the amount so obtained and determined, said board shall deduct the actual value of all real estate owned by it as ascertained by said board, and the actual value of all its personal property as ascertained by said board, which is not used in the express business of such express company. And the remainder thus obtained shall be used in determining the assessment of such express company in the following manner: The said board shall then divide the amount as obtained above by the total number of miles, as determined by said board, of railroad, stage, water and other routes, over which the company did business to obtain the value per mile, and shall then multiply the value per mile thus obtained by the total number of miles of such routes within this state, as determined by said board, to which result shall be added the value of all real estate owned by such express company in this state, as determined by said board, and the sum so obtained shall be taken and considered as the actual value of the property of such express company, subject to assessment and taxation in this state: Provided, That if in any case it shall become apparent to the said board that the ocean routes of any company are

Value of
property
of railroad
companies,
how de-
termined.

Value of
property
of telephone
and telegraph
companies,
how deter-
mined.

Express
companies,
value of
property,
how deter-
mined.

Assessment,
how deter-
mined.

Proviso.

Character,
mileage,
etc., special
reports of.

Further
proviso.

Car loaning,
stock car,
etc., value of
property, how
determined.

so different in character from its other routes that the mileage basis of apportionment of the value of the entire property to be apportioned in Michigan would be unfair if the full mileage of such ocean routes were included, then it may make such allowance for such ocean routes of any company as in its judgment will bring such routes upon a parity with its other routes, being guided therein by the relative mileage values and earning capacities of such ocean and other routes. For this purpose the board of assessors shall require special reports of the character, mileage, earnings and value of such ocean routes and may exclude from its aggregate mileage any ocean routes respecting which the company shall fail to furnish reports, and no further penalty shall be imposed for the failure to report the mileage of ocean routes: Provided further, That if any such company shall claim, in writing, that the mileage basis of apportionment of the value of the entire property to be attributed to Michigan is unfair, then such board shall make such apportionment as shall in its judgment be fair, being guided by the mileage within and without the state, making proper allowance for ocean mileage, as above provided for. In ascertaining the true cash value of the property in Michigan, of car loaning, stock car, refrigerator, fast freight line and other car companies, and other companies owning, leasing, running or operating cars subject to taxation under this act, the said state board of assessors shall be guided by the relation which the aggregate car mileage made or run by the entire number of cars owned or operated by each of such companies bears to the car mileage made or run by the entire number of cars owned or operated by any such company within this state.

Am. Id.

Assessment
roll to con-
tain general
description of
property.

Railroad, de-
pot compa-
nies, etc.

Telegraph and
telephone
companies.

Car loaning,
refrigerator,
etc., com-
panies.

(497) SEC. 10. Upon said assessment roll, after the name of each of the companies assessed thereon, shall be placed a general description of the property of said companies, which shall be deemed to include all of the properties of said companies liable to taxation under this act. In the case of railroad, union station and depot companies, such general description may be as follows: "Real estate, rolling stock, right of way and appurtenances, and all other property used in carrying on the corporate business and subject to taxation by a state board of assessors." In the case of telegraph and telephone companies, the following general description may be used: "Real estate, exchanges, switchboards, conduits, telegraph and telephone poles, and lines, and other appurtenances, and all other property used in carrying on the business of said company, and subject to taxation by a state board of assessors." In the case of car loaning, stock car, refrigerator and fast freight line, and other car companies and other companies, owning, leasing, run-

ning or operating any cars subject to taxation under this act, the following general description may be used: "Cars subject to taxation by a state board of assessors." In the case of express companies and sleeping car companies, the following general description may be used: "Property subject to taxation by a state board of assessors." In an appropriate column opposite the names of said corporations shall be extended the cash valuations of the properties of the said companies so assessed.

Valuations extended.

Am. Id.

(498) SEC. 11. On the third Monday of January in each year it shall be the duty of the state board of assessors to meet at the state capitol at Lansing, and to continue in session from day to day for so long a period as may be necessary, not later than the fifteenth day of February next thereafter, for the purpose of reviewing said assessment roll, and any company or person interested shall have the right to appear during said period and be heard as to the valuation of the property of any company, and said board of assessors may, on such application or on its own motion, correct the assessment or valuation of the property of such company in such manner as will, in its judgment, make the valuation thereof just and equal; and for the purpose of arriving at the true cash value of the properties assessed on said assessment roll, may subpoena witnesses as provided in section three of this act, and have such hearing as may be deemed necessary. In case it shall appear or be made to appear to the members of said board, acting in review for assessment purposes, that the property of any corporation subject to taxation under the provisions of this act shall have been omitted from said assessment roll, it shall place the same thereon and make the assessment thereof as required in sections nine and ten of this act: Provided, That any such assessment shall take place in time to allow five full days for the review of the same before the expiration of the time herein provided for the completion of the review. After said state board of assessors shall have completed the review of said rolls as herein provided, they shall place opposite each description of property in said roll, in a column provided for that purpose, the true cash value of the same as ascertained and determined by them, and such valuation so fixed by them shall be the final valuation upon which the tax upon said property shall be levied and spread as herein provided. After said board shall have completed the review of said roll, a majority thereof shall certify under their hands officially and spread on said roll, a certificate to the effect that the same has been acted upon and reviewed in accordance with law, which certificate shall state all the alterations, changes, corrections and additions made in or to the assessment or valuation of the property appearing on said

Annual meeting of board for review of assessment.

May subpoena witnesses.

May place on roll any property omitted.

Proviso as to time of assessment.

Cash value as fixed to be final.

To certify to work of review.

roll. And all the alterations, changes and corrections made in the determination of the true cash value of the property of the state other than that included in this act upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes for the current year, and also all the alterations, changes and corrections made in the computation of the average rate as hereinafter provided.

Duty of
county clerk.

(499) SEC. 12. It shall be the duty of the county clerk in each county in this state, as soon as possible after the equalization of the board of supervisors of his county of the assessment rolls of the several municipalities therein, and not later than the first day of December in each year, to make a report, duly certified, to the state board of assessors, of the record of such equalization and of the record required to be made under section thirty-seven of the general tax law, being section three thousand eight hundred sixty of the compiled laws of eighteen hundred ninety-seven, as appears upon the records of such board of supervisors, which report shall, among other things, contain a statement of the amount of ad valorem taxes to be raised in the several municipalities of such county, for state, county, municipal, township, school and other purposes, and a statement of the aggregate valuation of the property in each of said several municipalities, as taken from the assessment rolls of said municipalities for the year in which such equalization is made. It shall be the duty of the supervisor or other assessing officer of cities and villages in this state governed by special charters, which provide for the collection of ad valorem taxes, which are not reported to the board of supervisors for the purposes of equalization or review, and the supervisors or other assessing officers of cities organized under general laws, to make, within the time above limited, a properly certified report to the state board of assessors of all ad valorem taxes raised in any of said municipalities, which have not been reported to the board of supervisors for the purposes of equalization and review. In case any county clerk or any supervisor or assessing officer shall neglect or fail to make the report by this section required, within the time limited, the said state board of assessors shall inspect and examine, or cause an inspection and examination of the records of said board of supervisors, or in cities affected by this section, an examination of the records of the proper officers, for the purpose of procuring the information required for the purpose of arriving at the average rate of taxation in this state; and the said board, in addition thereto, may require such reports on blanks that it shall prepare and furnish therefor, from all county, state and municipal officers, as it shall deem necessary to the accomplishment of the purpose of this act. Any county clerk, supervisor or assessing officer, who shall fail to make the report required by this section shall be subject to a penalty of one hundred dollars, to be recov-

Duty of supervisor and
other assessing
officers.

Action of
board in case
of neglect of
county clerk
or assessing
officer.

Penalty for
neglect to
furnish report.

ered in a proper action in the name of the people of the state of Michigan, in any court of competent jurisdiction.

(500) SEC. 13. It shall be the duty of the said state board of assessors, not later than the fifteenth day of January in each year, from the information contained in the reports provided for in section twelve of this act, to ascertain and determine the average rate of taxation for the year in which said reports are required to be made, levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes, and enter the same upon its records forthwith, together with the method by which such average rate was ascertained and determined.

Board,
annual
meeting of,
for assess-
ment review.

Am. 1909, Act 49.

See Att'y Gen. v. State Bd. of Assessors, 143 / 73.

In determining the average rate of taxation on property throughout the state other than railroad property, with a view to the assessment of the latter the board of assessors should take as a basis the actual assessed valuation of such other property, as reported to it in accordance with said act, and it has no authority to increase such valuation on the theory that the assessments were too low.—Detroit Board of Education v. State Board of Assessors, 133 / 116.

(501) SEC. 14. Said board shall tax the property of the several companies as assessed by it at the rate as determined by it, and the amount of tax to be paid by each of said companies shall be extended upon said assessment roll, opposite the description of their respective properties. After the completion of said tax roll, and prior to the first day of March, in each year, the said board shall attach thereto a certificate, signed by the members of the board, or a majority thereof, which shall be as follows: "We do hereby certify that we have set down in the above assessment roll, all the property of railroad companies, express companies, union station and depot companies, telegraph and telephone companies, car loaning, stock car, refrigerator and fast freight line, and other car companies, and other companies owning, leasing, running or operating cars, and sleeping car companies, liable to be taxed in this state, according to our best information, and that we have estimated the same at what we believe to be the true cash value thereof, and that we have assessed the taxes thereon at the average rate of taxes for state, county, township, school, municipal and other purposes, levied through this state during the preceding year, as determined by us." The said tax roll shall thereupon be forthwith delivered to the auditor general, who shall immediately notify by registered mail the several companies taxed thereon to pay the taxes extended thereon to the state treasurer. The said taxes shall be payable on the first day of April, following the assessment and levy thereof, and shall be in lieu of all taxes for state and local purposes, not including special assessments on property particularly benefited, made in any county, city, village or township. All taxes not paid before the first day of May in the year in which the same are payable, shall bear interest

To tax
property of
companies as
assessed.

Certificate,
form of.

Taxes, when
payable.

Taxes, when
to bear
interest.

Taxes to be
a lien upon
property.

Board to an-
nex warrant
to roll; what
to command.

Proviso as to
enforcement
of lien.

thereafter at the rate of one per centum per month or any fraction thereof. The taxes so extended against said companies shall become forthwith a debt from each of said companies to the state and shall constitute a lien upon all the property of said companies, real, personal and mixed, which lien shall take precedence of all demands, judgments, assignments by warranty deed or otherwise, or decrees against said companies, which lien and debt may be enforced by seizure, or sale of said property or such portion thereof as may be necessary to satisfy the same, as hereinbefore provided. The state board of assessors shall, upon the completion of said roll and the correction hereinbefore provided for, annex to said roll a warrant, signed by the said state board, or a majority of them, commanding the auditor general to collect the several sums mentioned in the last column of such roll, and being the sum for which the said company was assessed and was liable to pay for a tax upon its property, under the provisions of this act for the purposes provided for in this act; and the said warrant shall authorize and command the auditor general, in case any corporation, company or person named in the assessment roll shall neglect or refuse to pay its tax, to levy the same by distress and sale of the properties of said corporation, company or person or such portion thereof as shall be necessary to raise sufficient money to satisfy said tax and the expense of said sale, after giving the same notice of said sales as provided for in the general laws of this state for the sale of property seized for taxes, and offered for sale: Provided, That he may bring an action in the name of the people of the state of Michigan in any court of competent jurisdiction in the state of Michigan, or in any other state, for the enforcement of said lien, and upon the recovery of judgment or decree therein, the same may be collected by execution, levy and sale, as in other cases, upon judgments in courts of record.

Am. Id.

When board
to redeter-
mine and re-
ascertain
average
tax rate.

Make dupli-
cate of origi-
nal tax roll
and extend
taxes.

(502) SEC. 15. If any court of competent jurisdiction shall adjudge that any tax levied under the provisions of this act is illegal on account of any irregularity or informality in the determination of average rate of taxation required to be ascertained and determined by said state board of assessors, or for the reason that such average rate has not been ascertained and determined according to law, it shall be the duty of said state board of assessors, whether any part of the taxes assessed and levied has been paid or not, to redetermine and reascertain the average rate of taxation throughout the state in accordance with law, and when such redetermination and reascertainment has been had, to make a duplicate of the original assessment roll and to extend the taxes thereon according to such redetermined and reascertained aver-

age rate, and when such duplicate roll has been made and the taxes extended thereon in the manner provided in this section, it shall be of the same force and effect as an original assessment made in accordance with law. All proceedings on the redetermination and reascertainment of such average rate and for the extension and collection of taxes upon said duplicate assessment rolls shall be conducted in the method originally provided for, so far as may be. Whenever any sum or part thereof levied upon any property subject to taxation under this act, so set aside, has been paid and not refunded, the payment so made shall be applied upon the reassessment upon said property, and the reassessment to that extent shall be deemed to be satisfied.

Method of redetermination.

Payments, how applied.

(503) SEC. 16. No tax assessed upon any property and no average rate determined by said state board of assessors as hereinbefore required, shall be held invalid by any court of this state on account of any irregularity in any assessment, or on account of any assessment or tax roll not having been made or proceeding had within the time required by law, or on account of the property having been assessed without the name of the owner, or in the name of any corporation or person other than the owner, or on account of any other irregularity, informality or omission, if the method and manner of ascertaining and determining the average rate of taxation on property in this state is in accordance with the constitution and statutes of this state.

When tax assessment and average rate not to be held invalid by any court.

(504) SEC. 17. All taxes collected under this act shall be applied in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the state debt, in the order herein recited, until the extinguishment of the state debt, other than the amounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund; and such taxes as are collected under the provisions of this act shall be treated and disbursed as specific taxes are now treated and disbursed: Provided, however, That if any of the corporations, companies or associations herein named were not paying specific taxes to this state on November six, A. D. nineteen hundred, the tax collected from such corporations, companies, or associations under this act shall be paid into and become a part of the general fund of the state.

Taxes collected, how applied.

Proviso as to taxes of certain companies.

(505) SEC. 18. Nothing herein contained shall be deemed a waiver or affect the collection of the specific taxes required to be paid by the companies hereby affected, on the first day of July in the year nineteen hundred nine, and previous years, under the general laws upon the property or business of such companies within this state. The existing laws providing for the collection of such specific taxes shall be continued in force until the collection and payment of all taxes

Act not to affect specific tax collection of 1909.

levied thereunder for the year nineteen hundred nine and previous years.

Am. 1909, Act 49.

Misdemeanor,
when mem-
bers guilty
of a.

(506) SEC. 19. If said board shall wilfully assess any property at more or less than what the members taking part in making such assessment believe to be its true cash value, the members voting in favor of such assessment shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five thousand dollars each.

Forfeiture
for bribery.

(507) SEC. 20. If any person, company, association or corporation whose property is subject to assessment under this act shall directly or indirectly promise, offer or give to any member of said board, during his term of office, or to any other person at his request, any gratuity of any kind whatever, such person or corporation shall forfeit to the state the sum of ten thousand dollars for each such offense, to be recovered in an action in the name of the people of the state of Michigan, in any court of competent jurisdiction. And the recovery of such fine under this act shall not constitute a bar to any prosecution of the person or corporation so offending under the criminal laws of this state.

Recovery not
a bar to
criminal
prosecution.

Repealing
clause.

(508) SEC. 21. All acts or parts of acts, whether contained in any act for the incorporation of railroad companies, union station and depot companies, telegraph and telephone companies, express companies, car loaning companies, stock car companies, refrigerator car companies, sleeping car companies, fast freight line companies, or other car companies, or in any other law of the state, so far as such acts or parts of acts are inconsistent with the provisions of this act, are hereby repealed, except as herein expressly stated: Provided, however, That all taxes levied or in process of assessment and levy, under the act to which this act is amendatory, shall be assessed, levied and collected under said act; all rights which the state now has under any of said acts for taxes or penalties shall not be in any way affected by this act; nor shall this act constitute a bar to any prosecution or suit for such taxes or penalties or the recovery of judgment therefor.

Proviso.

Am. 1909, Act 49.

TAXATION OF STREET RAILWAY COMPANIES.

[Extract from Act 206, P. A. 1893.]

Lighting and
water com-
panies.

(509) § 3831. SEC. 8. (16) The personal property of all gas and coke companies, natural gas companies, electric light companies, waterworks companies and hydraulic companies, to be assessed in the township, village or city where

the principal works are located. The mains, pipes and wires of such companies laid in or along roads, lanes, streets or alleys shall be assessed as personal property in the township, village, or city where the same are laid or placed. The personal property of street railroad, plank road, cable or electric railroad or transportation companies, bridge companies, and all other companies not required to pay a specific tax to the state in lieu of all other taxes, shall be assessed in the township, village or city where its principal business office is situated, and the track, road or bridge of any such company shall be held to be personal property and may be assessed in the township, village, or city where the same is located, used or laid.

Transportation, road and bridge companies.

SUB. 16: Pipes of a water company laid on its own lands from pumping works to source of supply and to the city supplied, are a part of the realty and assessable accordingly and in the township where situated.—*Water Company v. Frenchtown*, 98/431. The specific tax on pipe line companies, § 6504 C. L. '97, is not in lieu of other taxes. The general rules and manner of assessment apply to these corporations only to the extent that they do not conflict with the special provisions of this subject.—*Opinion of Attorney General Oren*, March 28, 1900. The levy of a personal tax on the mains of a water company prior to this act was without jurisdiction and void.—*Grand Haven v. Grand Haven Waterworks*, 119/652. Principal business office.—*Railway Co. v. Detroit*, 141/5.

An Act to authorize counties, townships, cities, and villages to raise money by taxation for the payment of their bonds, issued to aid in the construction of railroads.

[Act 166, P. A. 1875.]

The People of the State of Michigan enact:

(510) § 3986. SECTION 1. That the board of supervisors of any county, the township board of any township, the common council of any city, or the common council or board of trustees of any village which issued its bonds to aid in the construction of any railroad in this state prior to the twenty-sixth day of May, in the year of our Lord one thousand eight hundred and seventy, are hereby authorized and empowered to provide, by a tax to be collected from the taxable property in any such county, township, city or village, such sum or sums of money as may be necessary to pay the principal and interest due or to become due upon any such bonds issued by such county, township, city or village, and which has been negotiated prior to the twenty-sixth day of May, eighteen hundred and seventy, or upon any judgment obtained upon any such bond against any county, township, city or village.

Authority to levy tax for payment of bonds.

CONSTITUTIONALITY: *People v. Salem*, 20/452; *Bay City v. State Treas.*, 23/499; *Thomas v. Port Huron*, 27/320. See *La Grange Twp. v. State Treasurer*, 24/475; *Curtenius v. G. R. & I. R. R. Co.*, 37/583.

MUNICIPAL AID BONDS: *Mich. A. L. Ry. v. Mellen*, 44/321; *Pierson*

Twp. v. Reynolds Twp. Board, 49 / 224. Issue of new bonds for.—Pt. Huron v. McCall, 46 / 565.

INDIVIDUAL SUBSCRIPTIONS: Stowell v. Stowell, 45 / 364; T. & S. H. R. R. Co. v. Lamphear, 54 / 575; T. & A. A. R. R. Co. v. Johnson, 55 / 456; P. H. & S. W. Ry. Co. v. Potter, 55 / 627; Sickels v. Anderson, 63 / 421; Brown v. Dibble's estate, 65 / 520; P. O. & P. A. R. R. Co. v. King, 68 / 111. Signed on Sunday.—S., T. & H. R. R. Co. v. Chappell, 56 / 190.

Levy and collection of tax.

(511) § 3987. SEC. 2. The board of supervisors of any county, the township board of any such township, the common council of any such city, or the common council or board of trustees of any such village, at the time of raising the tax for general county, town, city or village purposes, may cause the amount necessary to be raised by tax for the payment of the principal and interest due upon such bonds, or which shall become due upon them within one year next after the time of raising said general tax according to the conditions of such bonds, to be placed in the general assessment roll of said county, township, city or village, in a separate column, which said tax shall be levied, assessed and collected in the same manner and subject to the same provisions as other general taxes for county, town, city or village purposes.

Corporations may issue new bonds.

(512) § 3988. SEC. 3. Any county, township, city or village may provide for the payment of the principal and interest due and unpaid at the time this act shall go into effect, upon such bonds, by the issue of new bonds, at a rate of interest not exceeding ten per cent per annum, and for such sums each, and for such a length of time as the board of supervisors, the township board, the common council of the city, or the common council or board of trustees of the village, shall direct. Such bonds shall have attached thereto the necessary and usual interest coupons, corresponding in dates and numbers with the bonds to which they are attached. Such bonds shall, if issued by a county, be executed by the chairman of the board of supervisors and the clerk of such board; if by a city, they shall be executed by the mayor and clerk, or recorder thereof, as the case may be, under the seal of said city; and if issued by a township, they shall be executed by the supervisor and clerk thereof; and if issued by a village, they shall be executed by the president and clerk, or recorder thereof, as the case may be.

Interest.

Coupons.

Who to execute bonds.

Levy of tax, annually, for payment of new bonds and interest.

(513) § 3989. SEC. 4. In case any county, township, city or village shall issue any bonds in accordance with the provisions of section three of this act, such county, township, city or village shall, each year, by its proper authorities, so long as such bonds remain unpaid, levy, assess, and collect, upon the taxable property of such county, township, city or village, a sufficient sum of money to pay all bonds, or the interest upon the same as the same shall become due; and the full faith and credit of any county, township, city or village, so issuing any such bonds, is hereby pledged for the full payment of both principal and interest thereon; and the

same are hereby made a valid and legal charge upon the taxable property of the county, township, city or village issuing the same.

(514) § 3990. SEC. 5. In case the boundaries of any county, township, city or village shall have been enlarged, diminished, or divided since the time it voted to issue any of the bonds mentioned in section one of this act, the taxes hereinbefore provided for shall be collected from the taxable property within the boundaries of such county, township, city or village, as they existed at the time such aid was voted. And in case such county, township, city or village shall have been divided into two or more counties, townships, cities or villages, since such aid was voted, such new counties, townships, cities and villages shall raise in manner hereinbefore provided, their proportionate share of such sum or sums of money as may be necessary to pay the principal and interest due or to become due on any such bonds, and any judgments which may have been or may hereafter be obtained therefor. And such proportionate share shall be ascertained in manner as provided by law for the apportionment of debts on the division of counties, townships, cities or villages respectively.

Where tax shall be levied when boundaries of corporations have been changed.

Section 6 was an immediate effect section in the original act.

(515) § 3991. SEC. 7. The sum [sums] of money so raised by said new counties, townships, cities and villages shall be paid by their respective treasurers to the proper treasurer of the counties, townships, cities or villages, in whose name said bonds were issued.

Money to be paid to treasurers.

An Act to provide for the taxation in the hands of their holders or owners or the persons or corporations, to whom owing, of the shares of stock in and indebtedness of certain railroad or railway corporations, whether the same be represented by bonds, other securities, interest coupons or otherwise; to require the making of reports by such railroad or railway corporations upon which to base such taxes; to fix the penalties for any refusal or neglect to make such reports, and to provide in certain instances for the inspection of the corporate books of any such railroad or railway corporation for the purpose of securing information upon which to base such taxation; to make the said tax a lien upon the property taxed and in certain instances upon the property of the said railroad or railway corporation issuing or owing the same, and to provide for the enforcement of the said lien and tax.

[Act 95, P. A. 1911.]

The People of the State of Michigan enact:

(516) SECTION 1. For the year nineteen hundred twelve, and for each year thereafter, a specific state tax shall be levied upon all of the shares of stock issued and outstand-

Railroads, stock, etc., of, specific tax upon.

ing of, and upon the indebtedness whether represented by bonds or other securities issued, or by unpaid interest coupons or otherwise, secured by a mortgage or trust deed or otherwise upon the railroad or property or any part thereof, or being a permanent indebtedness, owing by, all railroad or railway companies now or hereafter existing or doing business in Michigan under, or possessing or exercising any special charter or any rights, privileges or franchises under, any special charter which said tax shall be upon the interest or property therein of the holder or owner thereof, or the person or corporation to whom the same shall be owing and the said tax shall be as follows: The shares of stock shall be subject to an annual tax at the rate of two per cent upon the par value thereof, and the indebtedness, whether represented by bonds, past due interest coupons or otherwise, shall be subject to an annual tax at the rate of one per cent upon the face value or amount thereof.

Rate of
taxation.

Annual
report,
what to show.

(517) SEC. 2. Every such railroad or railway corporation shall, on or before the first day of May in each year, make and file with the auditor general a report, which shall set forth in detail the number of shares of its capital stock issued, the aggregate amount thereof, the names of the individual holders or owners, with the amount thereof held by each, together with the residence or place of business of each; the amount of its bonded indebtedness, together with the names of the persons or corporations holding or owning the same, and the amount thereof held or owned by each, with their residences or places of business; the amount of its other indebtedness secured by mortgage or otherwise upon its road or property, the names of the persons or corporations to whom owing, the amount thereof owing or belonging to or held by each with their residences or places of business; the amount of all other permanent indebtedness, together with the names of the persons or corporations to whom owing, the amount owing or belonging to or held by each with their residences or places of business. In any case where the said stock, bonds, securities or other indebtedness are held by a trustee or trustees, or by any other person or corporation for the owners thereof, and the said railroad or railway company shall not have the name or names and residences or places of business of the individual owner or owners thereof, it shall report the names and residences or places of business of said trustee or trustees or any other person holding the same for the owners thereof for any purpose, as the holders thereof, and in such case the auditor general may upon computation of the tax, assess it against such trustee or trustees. Such report shall be verified by the secretary and treasurer of the corporation. If any such corporation shall fail, neglect or refuse to make the said report within the time limited, it shall be subjected to the

Stock,
etc., held
by trustee.

Failure
to report,
penalty.

forfeiture of all its special rights and privileges in addition to a penalty of one hundred dollars per day during the period of such refusal or neglect, to be recovered in any court of competent jurisdiction in an action in the name of the people, and the right to bring repeated actions for the recovery of penalties is hereby given.

(518) SEC. 3. Upon the coming in of said reports and within thirty days thereafter, the auditor general shall compute at the rates herein fixed the taxes upon such stock, bonds, securities or indebtedness as the case may be, and shall enter the same upon his ledger as a charge and assessment against each of the several holders or owners of such stock, bonds, securities or indebtedness, and shall thereupon notify each of said corporations of the amount thus assessed and charged on account of the stock in, or bonds, securities or indebtedness issued or owing by such corporation, together with a detailed statement of the names of the persons or corporations against whose stock, bonds, security or credit, the said assessment and charges are made; he shall also forthwith notify each of such holders or owners of any such stock, bonds, securities or indebtedness of the amount assessed against him or it, by registered mail. Tax, computing of.

(519) SEC. 4. Said tax shall be payable to the state treasurer on or before the thirtieth day of June in the year in which assessed, and if not paid shall bear interest from the fifteenth day of July in the year in which payable at the rate of two per cent per month. When payable.

(520) SEC. 5. It shall be the duty of every such corporation to deduct the amount of said tax from any dividend or interest or principal which shall be by it payable or about to be paid, to the holders or owners of any such shares, bonds, securities or indebtedness, and in the event of its refusal or neglect to do so, the said corporation shall be liable for the amount thereof and all penalties for non-payment; and the amount thereof shall, in the event of such refusal or neglect, from the first day of May in the year in which assessed, be a lien upon all of its road and property, taking precedence of the lien upon or interest in the railroad or other property on account of which the tax was levied, and of all claims or rights in or to said railroad property arising subsequent to the time said tax becomes a lien. Dividends, etc., tax deducted from. Lien upon road, etc.

(521) SEC. 6. The said tax and interest thereon, shall from the first day of May in each year be a lien upon the shares, bonds, securities or indebtedness on account of which the same is assessed and charged, and shall take precedence of all liens thereupon or claims thereto and assignments or transfers thereof, and the tax may be recovered either through a proceeding to enforce such lien or by an action at law. Tax and interest, when to become a lien.

Report,
refusal to
make.

May examine
books, etc.

Informa-
tion, when
unable to
secure.

Lien, en-
forcement of.

Validity
of act.

Tax, pay-
ment of,
under protest.

(522) SEC. 7. In case any such railroad or railway corporation shall refuse or neglect to make such report within the time limited, the auditor general shall nevertheless make such computation of the tax against the holders or owners of such bonds, securities or indebtedness, if he can procure data therefor satisfactory to himself. If he be unable to otherwise procure sufficient data therefor, he may cause an examination to be made of the books and records of such corporation for the purpose of procuring the necessary information, and shall be entitled to the possession of the same for a reasonable time for such purpose; and all corporations now or hereafter subject to the provisions of this act shall be required to keep or to produce their corporate books in this state for the purpose of such inspection; the penalty of a refusal thereof to result ipso facto in a forfeiture of any special charter and all rights, privileges and franchises thereunder; in case the auditor general be unable to procure such information as is required herein as is satisfactory to himself for the purpose of fixing said tax and the persons against whom the same shall be charged and the said corporation refuses to furnish the same or to permit access to its books for that purpose, or in case the books upon inspection fail to furnish the information, then he shall upon the best information obtainable enter taxes against the shares, bonds, securities and indebtedness as a whole, and charge the same to the said railroad or railway corporation whose duty it shall be to reserve the amount thereof from the dividend or interest or principal payable or about to be paid to the holders or owners thereof, directly or through trustees or representatives, and to pay the same within the time herein limited to the said treasurer, and in such cases in addition to the lien against the shares, bonds, securities and indebtedness themselves, a lien for such tax and for all interest thereon shall exist upon the entire road and property of the said railroad or railway corporation, and the said lien and tax and interest thereon may be enforced against the said railroad or railway corporation, or against any person or corporation liable for the same, either by foreclosure of the said lien or by an action at law, or through any method or procedure heretofore at any time in force in Michigan for the collection of specific taxes.

(523) SEC. 8. It is the purpose that this act shall be valid as far as possible and the invalidity of any provision shall not render invalid other provisions.

(524) SEC. 9. Any person or corporation against whom any tax under this act is assessed or who or which may be required to pay the same, may pay the same to the state treasurer under protest, giving notice at the time of payment of the reasons for such protest; and the party making such payment may at any time within thirty days thereafter sue

the said state treasurer for the recovery thereof in any court of competent jurisdiction, and if it determines that the same was wrongfully collected as not being due to the state for any reason going to the merits of the same, then the court trying the case may certify of record that the same was wrongfully paid and ought to be refunded, whereupon the auditor general shall issue his warrant for the same which shall be paid in preference to other claims upon the treasury. The right of appeal shall exist to both parties as in other actions. There shall be no other remedy in any case of the collection of the tax under this act than that above provided, and no writ for the prevention of the collection of any revenue claimed hereunder or to hinder or delay collection of the same shall in any wise issue, but in all cases in which for any reason it shall be claimed that the tax was collected or about to be collected, was or is wrongfully or illegally collected or about to be collected, the remedy shall be as above provided, and in no other manner.

(525) SEC. 10. In case of suit on the part of the state or its officers to enforce collection of such tax against the holders or owners of any such shares, bonds, securities or indebtedness, it shall be permissible to join as defendants in a single case all persons or corporations owning or holding the stocks, bonds, securities or indebtedness of a single corporation, and in case such persons or corporations are non-residents of the state, service upon them may be had by serving any process upon the corporation issuing the bonds, stocks or securities or owing the indebtedness. In addition it shall be permissible to make service upon any such non-residents by publication in the manner provided by law.

(526) SEC. 11. No tax levied under this act shall be declared invalid or set aside because of any irregularity or mistake in the name of the person or corporation against whom the assessment is made. In the event of a judgment in an action at law or equity for the amount of the tax, the same may be enforced, either against the property on account of which the tax is levied, or against any other property within the state belonging to the persons or corporations subject to such tax.

(527) SEC. 12. As a cumulative and additional method of procedure in the assessment of such tax, in those cases where any corporation required to report neglects or refuses to make such report, the auditor general may at his option proceed in the making of such assessment and giving notice thereof, and the persons or corporations taxed may proceed in contesting the assessment, in the manner provided in sections four thousand thirty to four thousand thirty-four inclusive, of the compiled laws of eighteen hundred ninety-seven.

Insufficient
earnings.

Recovery
of tax.

(528) SEC. 13. In case any railroad or railway corporation whose shares, securities, bonds or indebtedness are subject to taxation under this act, shall not, under its method of apportioning earnings on through or joint business, produce sufficient net earnings to pay dividends or the interest upon its indebtedness, from which such tax may be collected, or if such corporation shall not declare a dividend or pay interest from funds available therefor, and such tax shall not be paid, then the attorney general may institute proceedings against such corporation for the recovery of the taxes assessed on account of its shares, bonds, securities or indebtedness; and if in any such proceedings the court shall determine that any proprietary or connecting line has been allowed or paid a greater proportion of the earnings than should have been allowed or paid, as its reasonable and equitable proportion of through or joint earnings, or if the said court shall determine that said corporation earned or possesses funds which are applicable to the payment of dividends or interest or principal, then in either such case such corporation shall be liable to the state in the first instance for the amount of such tax, but only to the amount of earnings paid by it to any such connecting or proprietary line or railroad in excess of the fair and reasonable amount that in the judgment of the court should have been paid, or to the amount of undistributed surplus applicable to the payment of dividends, interest or principal, and any amount collected from such corporation under this section may be by such corporation charged against the persons or corporations on account of whose tax the collection was made.

Perjury,
what deemed.

(529) SEC. 14. Any corporation or officer thereof which or who shall in reporting pursuant to this act make a false report, shall be deemed guilty of perjury and subject to penalty therefor as provided by general law.

An Act regulating the taxation of steam vessels, steam boats and other steam water craft of registered tonnage within the state of Michigan.

[Act 70, P. A. 1911.]

The People of the State of Michigan enact:

Steam
vessels, etc.,
tonnage tax.

(530) SECTION 1. In consideration of an annual payment into the state treasury by the owner of any steam vessel, steam barge or steam boat engaged in the carrying of passengers, holding license for such purpose, or carrying passengers and freight, owned within this state or hailing from any port thereof, and employed in the navigation of inter-

national waters or waters of the Great Lakes, of a sum equal to twenty cents per net ton on the registered tonnage thereof, and the annual payment into the state treasury by the owner of any steam vessel, steam barge or steam boat engaged in the carrying of freight only, owned within this state or hailing from any port thereof and employed in the navigation of international waters, of a sum equal to ten cents per net ton on the registered tonnage thereof, such payment shall be received in lieu of all taxes, and such steam vessel, steam barge or steam boat shall be and the same is hereby made exempt from all further taxation, either state, county or municipal, upon the payment of the sums herein provided.

This act affects only taxes of 1912 and subsequent years.—Mackinac Transportation Co. v. Mackinaw Township, 175 / 418.

(531) SEC. 2. The owner of any steam vessel, steam barge or steam boat hailing from any port of this state and employed in the navigation of international waters or waters of the Great Lakes, to comply with the terms of this act, shall annually, on or before the first day of December, file with the auditor general a verified statement in writing containing the name, port of hail, tonnage and name of owner of such steam vessel, steam barge or steam boat, and shall thereupon pay into the state treasury a sum equal to ten cents for freighter or twenty cents for passenger boat per net ton on the registered tonnage of said vessel, and the said treasurer shall thereupon issue his receipt therefor.

Verified statement, what to contain.

(532) SEC. 3. The said state treasurer shall annually, on or before the first day of December, pay into the county treasury of any county wherein is located the port of hail of any steam vessel, steam barge or steam boat complying with this act, all money so received from any steam vessel, steam barge or steam boat whose port of hail is within said county. The county treasurer of said county shall then pay to the city or township wherein is located the port of hail of said steam vessel, steam barge or steam boat such proportion of said money or tax as the amount of state and county tax paid by said city or township bears to the whole state and county tax in said county, as fixed and determined by the board of supervisors of said county at the annual meeting of said supervisors at which said board equalizes and apportionments the amount of taxes that shall be paid by such city or township for state and county purposes, and the balance shall be retained by said county treasurer for state and county purposes, in proportion to the amounts said state and county are each entitled to under such apportionment by said board of supervisors.

Money, where paid.

CHAPTER VIII.—POLICE REGULATIONS.

An Act to regulate the sale of tickets by railroad companies at special rates and on special conditions.

[Act 145, P. A. 1875.]

The People of the State of Michigan enact:

Tickets may be sold on conditions, if at special rates.

(533) § 5255. SECTION 1. That any railroad corporation doing business in this state may make contracts for the conveyance of passengers upon designated trains, for a specific distance, at fixed times, at such reduced rates of fare as the parties may agree upon. Tickets may be issued for such passengers, upon which shall be plainly printed the terms upon which they may be used. Such tickets shall not entitle the holder to ride upon any train not therein designated, or at any time beyond that stipulated therein.

Hufford v. G. R. & I. Ry. Co., 53 / 118.

An Act relative to the use of sleeping, parlor, and chair cars upon the railroads of this state.

[Act 38, P. A. 1875.]

The People of the State of Michigan enact:

Railroads may build and run their own sleeping cars.

(534) § 5252. SECTION 1. It shall be lawful for any railroad company operating any railroad within this state, to construct or use for the transportation of passengers, sleeping cars, parlor cars, or chair cars, for the use of such passengers as may desire to use the same, and such company may make such reasonable rules and regulations concerning the use of these as such company may think proper, and may charge a reasonable compensation for such use in addition to the regular passenger fares allowed by law.

Other accommodations necessary.

(535) § 5253. SEC. 2. Nothing herein contained shall release any such railroad company from its obligations to furnish first-class passenger cars for the use of the public for the regular passenger fares now fixed by law.

An Act to provide for the bulletining of the arrival of passenger trains.

[Act 142, P. A. 1895.]

The People of the State of Michigan enact:

(536) § 5256. SECTION 1. That every corporation, company or person, operating a railroad within this state shall, immediately after the taking effect of this act, cause to be placed in a conspicuous place in each passenger depot of such company, located at any station in this state, at which there is a telegraph office, a blackboard of suitable size, upon which such company or person shall cause to be written, at least twenty minutes before the schedule time for the arrival of each passenger train stopping upon such route at such station, the fact whether such train is on schedule time or not, and if late, how much, and the station at which such train was when report was received: Provided also, That any passenger train not more than five minutes late shall be deemed to be on time as to the operation of this act.

Display of bulletins for record of time of arrival of passenger trains.

Proviso.

(537) § 5257. SEC. 2. That for each violation of the provisions of this act in failing to report or in making a false report, such corporation, company, or person so neglecting or so refusing to comply with the provisions of this act, shall forfeit and pay the sum of twenty-five dollars, together with all taxable costs, to be recovered in a civil action to be prosecuted by the prosecuting attorney of the county in which the neglect or refusal occurs, in the name of the state of Michigan, which shall be paid over to the county in which such proceedings are had, and shall be part of the common school fund.

Penalty for violation of this act.

An Act to regulate the length of time which shall be a day's labor by certain employes on railroads in this state, and to provide for pro rata compensation for extra services in addition to their daily compensation.

[Act 177, P. A. 1893.]

The People of the State of Michigan enact:

(538) § 5458. SECTION 1. That no person, corporation, joint stock company or association of individuals owning or operating a line of railroad, in whole or in part, within this state, shall permit or require any conductor, engineer, fireman, brakeman or any trainman who has worked in any capacity for twenty-four hours to again go on duty or perform any kind of work until he has had at least eight hours rest.

Unlawful for any railroad company to overwork any employes.

What to constitute a day's labor.

Proviso.

Further proviso.

When more than ten hours' work is done.

Compensation for.

Penalty for violation of.

(539) § 5459. SEC. 2. Ten hours labor performed within twelve consecutive hours shall constitute a day's labor in the operation of all steam, surface and elevated railroads now owned and operated or hereafter owned and operated within this state: Provided, That this act shall not apply to regular schedule trains when completed within a less number of hours: Provided further, That the provisions of this act shall not apply to extra hours of labor performed by any conductor, engineer, fireman, brakeman or trainman in cases of unavoidable accident or delay caused by such accident.

(540) § 5460. SEC. 3. Every hour in excess of ten hours labor performed in any one day by any conductor, engineer, fireman, brakeman or any trainman of any railroad company, corporation, joint stock company or association of individuals or person owning or operating a railroad within this state, who works under the direction of a superior or at the request of such person, company, corporation, joint stock company or association of individuals and who shall be required or permitted to work shall be deemed one-tenth of a day's labor and such conductor, engineer, fireman, brakeman or trainman shall receive pro rata compensation for said extra service in addition to his daily compensation.

(541) § 5461. SEC. 4. Any person, agent or employe of such person, railroad company, corporation, joint stock company or association of individuals violating the provisions of this act, shall be guilty of a misdemeanor, and on conviction shall be punishable by a fine of not less than fifty and not to exceed one hundred dollars in the discretion of the court.

An Act for the regulation of freights on railroads in the state of Michigan.

[Act 153, P. A. 1883.]

The People of the State of Michigan enact:

Regulation of freights at points having no competing lines, etc.

(542) § 5247. SECTION 1. That it shall be unlawful for any railroad company doing business in this state, operating the shortest competing line of railroad, to charge a greater amount of toll or compensation for the transportation of freight from any non-competing point on its line of railroad than it shall charge at the nearest railroad competing point on its line of road in opposite direction to that from which such freight is to be moved, when of the same class, in like quantity, and for the same destination in this state. It is also hereby further provided that whenever freight is taken from any point on the longer competing line or lines, that where the distance from such shipping point to the place of

destination does not exceed the entire length of the shortest competing line, then the same rule shall apply as is provided in this section for the shortest competing line as to rates of freight.

(543) § 5248. SEC. 2. Any railroad company doing business in this state violating any of the provisions of this act shall forfeit to the state for each offense a sum not less than fifty dollars nor more than one hundred and fifty dollars, and shall be liable to the party so overcharged in the amount of such excessive charge and costs of suit. Forfeiture for violations.

An Act defining bills of lading to be issued by common carriers, railroads and transportation companies, prescribing as to the form, issue, use and surrender thereof, providing penalties for the violation of this act and repealing acts inconsistent therewith.

[Act 271, P. A. 1909.]

The People of the State of Michigan enact:

(544) SECTION 1. Whenever any common carrier, railroad or transportation company (hereinafter termed carrier) shall issue a bill of lading for the transportation of property from one place to another within this state, or between places one of which is within this state, which bill shall be, or purport to be, drawn to the order of the shipper or other specified person, or which shall contain any statement or representation that the property described therein is, or may be deliverable upon the order of any person therein mentioned, such bill shall be known as an "order bill of lading" and shall conform to the following requirements: "Order bill of lading."

(a) In connection with the name of the person to whose order the property is deliverable, the words "order of" shall prominently appear in print on the face of the bill, thus: "Consigned to order of;" Requirements.

(b) The bill shall be printed on yellow paper, eight and one-half inches wide by eleven inches long;

(c) It shall contain on its face the following provision: "The surrender of this original order bill of lading properly endorsed shall be required before delivery of the property;"

(d) It shall not contain the words "not negotiable" or words of similar import. If such words are placed on an order bill of lading, they shall be void and of no effect;

(e) Nothing herein shall be construed to prohibit the insertion in an order bill of lading of other terms or conditions not inconsistent with the provisions of this act; but it shall be unlawful to insert in such bill any terms or conditions contrary to, or inconsistent with, such provisions.

"Straight bill of lading" defined.

(545) SEC. 2. Whenever a bill of lading is issued by a carrier for the transportation of property from one place to another within this state, or between places one of which is within this state, in which the property described therein is stated to be consigned or deliverable to a specified person, without any statement or representation that such property is consigned or deliverable to the order of any person, such bill shall be known as a "straight bill of lading" and shall contain the following requirements:

What to contain.

(a) The bill shall be printed on white paper eight and one-half inches wide;

(b) The bill shall have prominently stamped upon its face the words "not negotiable;"

Express companies.

(c) Nothing herein shall be construed to prohibit the insertion in a straight bill of lading of other terms or conditions not inconsistent with the provisions of this act, but it shall be unlawful to insert in such bill any terms or conditions contrary to or inconsistent with such provisions. Nothing herein contained shall be construed to prohibit express companies from using the customary receipts employed by them in the ordinary transaction of their business.

Am. 1911, Act 234.

Penalty for violation.

(546) SEC. 3. Every carrier, or officer, agent or servant of a carrier, who shall knowingly violate any of the requirements stated in subdivisions a, b, c, d, or e of section one and in subdivisions a, b, or c of section two shall be guilty of a misdemeanor and punishable by fine of not more than one thousand dollars or imprisonment not more than one year, or both.

When unlawful to issue.

(547) SEC. 4. It shall be unlawful for any carrier, or for any officer, agent or servant of a carrier, to issue an order bill of lading or a straight bill of lading, as defined by this act, until the whole of the property as described therein shall have been actually received and is at the time under the actual control of such carrier, to be transported; or to issue a second or duplicate order bill of lading or straight bill of lading for the same property, in whole or in part, for which a former bill of lading has been issued and remains outstanding and uncanceled, without prominently marking across the face of the same the word "Duplicate."

Duplicate order.

Penalty for violation.

(548) SEC. 5. Every carrier, or officer, agent or servant of a carrier, who knowingly violates the provisions of section four of this act and every person who negotiates or transfers for value a bill of lading known by him to have been issued in violation of said section four, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both. And every carrier who himself, or by his officer, agent or servant authorized to issue bills of lading,

False bill.

issues a false or duplicate bill of lading in violation of the provisions of section four of this act, shall be estopped, as against all and every person or persons injured thereby and shall acquire any such false or duplicate bill of lading in good faith and for value, to deny the receipt of the property as described therein, or to assert that a former bill of lading has been issued and remains outstanding and uncanceled for the same property, as the case may be; and such issuing carrier shall be liable to any and every such person for all damages, immediate or consequential, which he or they may have sustained because of reliance upon such bill, whether the person or persons guilty of issuing or negotiating such bill shall have been convicted under this section or not.

(549) SEC. 6. Every person who receives from a carrier and fraudulently negotiates for value, an order or straight bill of lading representing property to which he has no, or an encumbered, title, at the time of the negotiation of such bill, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five thousand dollars or imprisonment not exceeding five years, or both.

(550) SEC. 7. It shall be unlawful for any carrier, or officer, agent or servant of a carrier, to deliver the property described in an order bill of lading without requiring surrender and making cancellation of such bill, or in case of partial delivery, indorsing thereon a statement of the property delivered: Provided, That in lieu of such delivery, it shall be lawful for the carrier, or his officer, agent or servant in his behalf, to take from the person to whom such property is delivered a good, sufficient and valid bond in a sum double the value of the property, conditioned that such person shall, within a reasonable time thereafter, deliver to the carrier the original order bill of lading issued for said property or shall pay the value of said property to the carrier upon demand; and upon the execution and delivery of said bond as aforesaid, it shall be lawful for the carrier, or his officer, agent or servant, to deliver the goods to the person claiming title thereto, without requiring the immediate surrender of said order bill of lading. Every carrier, or officer, agent or servant of a carrier, who knowingly violates the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by fine not exceeding five thousand dollars or imprisonment not exceeding five years, or both. And every carrier who by himself, or by officer, agent or servant authorized to deliver goods upon surrender of an order bill of lading, violates the provisions of this section, shall be estopped as against all and every person or persons injured thereby who shall acquire in good faith and for value any such order bill of lading, from asserting that the property as described therein, has been delivered; and such delivering carrier shall be liable to any and every such person for all damages, immediate or consequential, which he or they may

Damages.

Fraudulent negotiation.

Penalty.

Delivery of property.

Proviso, bond.

When lawful to deliver goods without surrender.

Penalty for violation.

Damages.

Proviso, when property replevied, etc.

Alteration, etc.

Proviso.

have sustained because of reliance upon such bill, whether the person or persons violating this section have been convicted of such violation or not: Provided, That the provisions of this section shall not apply where the property is replevied or removed from the possession of the carrier by operation of law; or has been lawfully sold to satisfy the carrier's lien; or in cases of sale or disposition of perishable, hazardous or unclaimed goods in accordance with law or the terms of the bill of lading.

(551) SEC. 8. Any material alteration, addition or erasure in or to an order bill of lading or a straight bill of lading, fraudulent or otherwise, shall be without effect and in the hands of a bona fide holder for value, not a party to the alteration thereof, such bill shall be valid and may be enforced according to its original tenor: Provided, however, That an alteration, addition or erasure in or to any such bill of lading with signature thereto endorsed thereon, by the issuing carrier, or his officer, agent or servant in his behalf, and with the consent of the holder thereof, shall be valid and effective.

Section 9 repeals inconsistent acts.

UNIFORM BILL OF LADING.

An Act to provide for uniform bills of lading, to fix the punishment for violations of this act, and to repeal all acts or parts of acts inconsistent herewith.

[Act 165, P. A. 1911.]

The People of the State of Michigan enact:

- Act to govern. (552) SECTION 1. Bills of lading issued by any common carrier shall be governed by this act.
- (553) SEC. 2. Every bill must embody within its written or printed terms:
- Date. (a) The date of its issue;
- Name. (b) The name of the person from whom the goods have been received;
- (c) The place where the goods have been received;
- Destination. (d) The place to which the goods are to be transported;
- To whom sent. (e) A statement whether the goods received will be delivered to a specified person, or to the order of a specified person;
- Description. (f) A description of the goods or of the packages containing them which may, however, be in such general terms as are referred to in section twenty-three, and
- (g) The signature of the carrier.

A negotiable bill shall have the words "order of" printed thereon immediately before the name of the person upon whose order the goods received are deliverable. A carrier shall be liable to any person injured thereby for the damage caused by the omission from a negotiable bill of any of the provisions required in this section.

Perkett v. M. & N. R. Co., 175 / 253.

(554) SEC. 3. A carrier may insert in a bill issued by him any other terms and conditions, provided that such terms and conditions shall not:

(a) Be contrary to law or public policy; or

(b) In any wise impair his obligation to exercise at least that degree of care in the transportation and safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

(555) SEC. 4. A bill in which it is stated that the goods are consigned or destined to a specified person, is a non-negotiable or straight bill.

(556) SEC. 5. A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill, is a negotiable or order bill. Any provision in such a bill that it is non-negotiable shall not affect its negotiability within the meaning of this act.

(557) SEC. 6. Negotiable bills issued in this state for the transportation of goods to any place in the United States on the continent of North America, except Alaska, shall not be issued in parts or sets. If so issued the carrier issuing them shall be liable for failure to deliver the goods described therein to any one who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts.

(558) SEC. 7. When more than one negotiable bill is issued in this state for the same goods to be transported to any place in the United States on the continent of North America, except Alaska, the word "duplicate" or some other word or words indicating that the document is not an original bill shall be placed plainly upon the face of every such bill, except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to any one who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill.

(559) SEC. 8. A non-negotiable bill shall have placed plainly upon its face by the carrier issuing it "non-negotiable" or "not negotiable." This section shall not apply, however, to memoranda or acknowledgments of an informal character.

(560) SEC. 9. The insertion in a negotiable bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill nor constitute

Liability
of carrier.

Condi-
tions of bill.

Care in
transporta-
tion.

Non-ne-
gotiable bill.

Negotiable
bill.

Not to be
issued in sets.

Duplicate
bills.

Liable
for damages.

Facing of bill.

Name of
person to
be notified.

notice to a purchaser thereof of any rights or equities of such person in the goods.

Consignor
bound by
terms, etc.

(561) SEC. 10. Except as otherwise provided in this act, where a consignor receives a bill and makes no objection to its terms or conditions at the time he receives it, neither the consignor nor any person who accepts delivery of the goods, nor any person who seeks to enforce any provision of the bill, shall be allowed to deny that he is bound by such terms and conditions, so far as they are not contrary to law or public policy.

Carrier
bound to de-
liver goods,
etc.

(562) SEC. 11. A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods, or if the bill is negotiable, by the holder thereof, if such demand is accompanied by:

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods;

(b) An offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is negotiable; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

Failure
to deliver.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure.

Delivery
of goods.

(563) SEC. 12. A carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is

(a) A person lawfully entitled to the possession of the goods; or

(b) The consignee named in a non-negotiable bill for the goods; or

(c) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been indorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consignee.

Liability
of carrier.

(564) SEC. 13. Where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to any one having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he:

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery; or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

A request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods. Request or information.

(565) SEC. 14. Except as provided in section twenty-seven, and except when compelled by legal process, if a carrier delivers goods for which a negotiable bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to any one who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled thereto. Delivery on negotiable bill.

(566) SEC. 15. Except as provided in section twenty-seven, and except when compelled by legal process, if a carrier delivers part of the goods for which a negotiable bill had been issued and fails either: Delivery in part.

(a) To take up and cancel the bill; or

(b) To place plainly upon it a statement that a portion of the goods has been delivered, with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill, to any one who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto.

(567) SEC. 16. Any alteration, addition or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted on the bill shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor. Alterations, etc.

(568) SEC. 17. Where a negotiable bill has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees. The delivery of the goods under an order of the court as provided When negotiable bill lost.
Costs, etc.

in this section, shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

Duplicate
bill,
liability.

(569) SEC. 18. A bill upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability.

Title, etc.,
asserted
by carrier.

(570) SEC. 19. No title to goods or right to their possession, asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien.

Claimants
to interplead.

(571) SEC. 20. If more than one person claims the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate.

Carrier
excused from
liability.

(572) SEC. 21. If some one other than the consignee or person in possession of the bill, has a claim to the title or possession of the goods, and the carrier has information of such claim the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

Title of
third person.

(573) SEC. 22. Except as provided in the two preceding sections and in section twelve, no right or title of a third person unless enforced by legal process shall be a defense to an action brought by the consignee of a non-negotiable bill or by the holder of a negotiable bill against the carrier for failure to deliver the goods on demand.

Liability
to consignee.

(574) SEC. 23. If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to

(a) The consignee named in a non-negotiable bill; or

(b) The holder of a negotiable bill,

Goods,
description of.

Who has given value in good faith relying upon the description therein of the goods, for damages caused by the non-receipt by the carrier or a connecting carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue. If, however, the goods are described in a bill merely by a statement of marks or labels upon them or upon packages containing them, or by

a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may, also, by inserting in the bill the words "shipper's load and count" or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the non-receipt or by the misdescription of the goods described in the bill.

Shipper's
load and
count.

(575) SEC. 24. If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner and a negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court.

Attach-
ment, etc.

(576) SEC. 25. A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which can not readily be attached or levied upon by ordinary legal process.

Injunction,
attach-
ment, etc.

(577) SEC. 26. If a negotiable bill is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier.

Lien on goods.

(578) SEC. 27. After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods to the

Satisfaction
of lien, etc.

	consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be negotiable.
Negotiation by delivery.	(579) SEC. 28. A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank.
By indorsement.	(580) SEC. 29. A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner.
Transfer.	(581) SEC. 30. A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby. A non-negotiable bill can not be negotiated, and the indorsement of such a bill gives the transferee no additional right.
Person in possession.	(582) SEC. 31. A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery.
Title to goods.	(583) SEC. 32. A person to whom a negotiable bill has been duly negotiated acquires thereby: (a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value; and
Obligation of carrier.	(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him.
Title to transferred goods.	(584) SEC. 33. A person to whom a bill has been transferred but not negotiated acquires thereby as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the bill is non-negotiable, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.
Notification of carrier.	Prior to the notification of the carrier by the transferor or transferee of a non-negotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attach-

ment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor. A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time with the exercise of reasonable diligence to communicate with the agent or agents having actual possession or control of the goods.

(585) SEC. 34. Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. Right of transferee.

(586) SEC. 35. A person who negotiates or transfers for value a bill by indorsement or delivery, including one who assigns for value a claim secured by a bill, unless a contrary intention appears, warrants: Transfer by indorsement or delivery.

- (a) That the bill is genuine;
- (b) That he has a legal right to transfer it;
- (c) That he has knowledge of no fact which would impair the validity or worth of the bill, and
- (d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

In the case of an assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim.

(587) SEC. 36. The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations. Indorsement.

(588) SEC. 37. A mortgagee or pledgee, or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described. Genuineness not warranted.

(589) SEC. 38. The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, Negotiation, validity of.

duress or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor, in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress or conversion.

Mortgaged or
pledged goods.

(590) SEC. 39. Where a person having sold, mortgaged or pledged goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation.

Transfer
or retention,
how indicated.

(591) SEC. 40. Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows:

(a) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the property in the goods to the buyer;

(b) Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract;

(c) Where by the bill the goods are deliverable to the order of the buyer or of his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer;

(d) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer, or to the order of the buyer, or is indorsed in blank or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill or goods from the buyer, shall obtain the title to the goods, although the draft has not been honored, if such purchaser has received delivery of the bill indorsed by the consignee named therein,

or of the goods, without notice of the facts making the transfer wrongful.

(592) SEC. 41. Where the seller of goods draws on the buyer for the price of the goods and transmits the draft and a bill of lading for the goods either directly to the buyer or through a bank or other agency, unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming:

Where seller draws on buyer and transmits draft and bill of lading.

(a) If the draft is by its terms or legal effect payable on demand or presentation or at sight, or not more than three days thereafter (whether such three days be termed days of grace or not), that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill;

(b) If the draft is by its terms payable on time, extending beyond three days after demand, presentation or sight (whether such three days be termed days of grace or not), that the seller intended to require acceptance, but not payment of the draft before the buyer should be entitled to receive or retain the bill.

The provisions of this section are applicable whether by the terms of the bill the goods are consigned to the seller, or to his order, or to the buyer, or to his order, or to a third person or to his order.

(593) SEC. 42. Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated; whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation.

Seller's lien not to defeat rights of purchaser.

(594) SEC. 43. Except as provided in section forty-two nothing in this act shall limit the rights and remedies of a mortgagee or lienholder whose mortgage or lien on goods would be valid, apart from this act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them.

Rights, etc., of mortgagee or lien holder.

(595) SEC. 44. Any officer, agent or servant of a carrier, who with intent to defraud issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received by such carrier, or by an agent of such carrier or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

Bill, unlawful issue of.

False
statements.

(596) SEC. 45. Any officer, agent or servant of a carrier, who with intent to defraud issues or aids in issuing a bill for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Duplicate
or addition-
al bills.

(597) SEC. 46. Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of the provisions of section seven, knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

Want
of title
by shipper.

(598) SEC. 47. Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Certain
negotiation
unlawful.

(599) SEC. 48. Any person who with intent to deceive negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such carrier, or of a connecting carrier, without disclosing this fact, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

Securing bill
by misrep-
resentation.

(600) SEC. 49. Any person who with intent to defraud secures the issue by a carrier of a bill, knowing that at the time of such issue any or all of the goods described in such bill as received for transportation have not been received by such carrier, or an agent of such carrier or a connecting carrier, or are not under the carrier's control, by inducing an officer, agent or servant of such carrier falsely to believe that such goods have been received by such carrier, or are under its control, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

Non-negoti-
able bills.

(601) SEC. 50. Any person who with intent to defraud issues or aids in issuing a non-negotiable bill without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a crime, and upon conviction shall be

punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

(602) SEC. 51. In any case not provided for in this act, the rules of law and equity including the law merchant, and in particular the rules relating to the law of principle [principal] and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, accident, mistake, bankruptcy, or other invalidating cause, shall govern. Rules of law and equity governing.

(603) SEC. 52. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. Act, how construed.

(604) SEC. 53. (1) In this act, unless the context or subject matter otherwise requires: Terms defined.

“Action” includes counter-claim, set-off, and suit in equity.

“Bill” means bill of lading.

“Consignee” means the person named in the bill as the person to whom delivery of the goods is to be made.

“Consignor” means the person named in the bill as the person from whom the goods have been received for shipment.

“Goods” means merchandise or chattels in course of transportation, or which have been or are about to be transported.

“Holder” of a bill means a person who has both actual possession of such bill and a right of property therein.

“Order” means an order by indorsement on the bill.

“Owner” does not include mortgagee or pledgee.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee and to take as pledgee.

“Purchaser” includes mortgagee and pledgee.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a bill is taken either in satisfaction thereof or as security therefor.

(605) (2) A thing is done “in good faith,” within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

(606) SEC. 54. The provisions of this act do not apply to bills made and delivered prior to the taking effect thereof. Nothing herein contained shall be construed to prohibit express companies from using the customary receipts employed by them in the ordinary transaction of their business. Application of act.

Sec. 55 repeals all acts or parts of acts inconsistent with this act.

(607) SEC. 56. This act may be cited as the uniform bills of lading act.

An Act to prohibit the false billing, false classification and false weighing of any goods, property or effects offered to any common carrier in this state for the purpose of transportation, and to provide a penalty for the violation hereof.

[Act 253, P. A. 1911.]

The People of the State of Michigan enact:

Description of goods.	(608) SECTION 1. Every person, firm or corporation offering goods, property or effects to any common carrier within this state for the purpose of transportation shall furnish to such carrier a true description of the goods, property or effects so offered.
False description.	(609) SEC. 2. Any person, firm or corporation who shall knowingly offer any goods, property or effects to any common carrier for transportation within this state with a false description of the same, or who shall offer any such goods, property or effects under a false billing, false classification or false weight and thereby procure or attempt to procure the transportation of any such goods, property or effects at a less cost than would be due under a true description, true billing, true classification or true weight, shall be deemed guilty of a misdemeanor, and upon conviction thereof by any court of competent jurisdiction shall be punished by a fine of not to exceed two hundred dollars or by imprisonment in the county jail for a term not to exceed ninety days, or by both such fine and imprisonment in the discretion of the court.
Penalty.	

TRANSPORTATION OF STATE TROOPS, EQUIPMENTS, HORSES, ETC.

[Extract from Act 84, P. A. 1909.]

Transportation, military.	(610) SEC. 43. Whenever it shall be necessary for any or all of the officers or men of the militia to travel upon any railroad of this state, whether steam, electric or otherwise, or any passenger steamboat line, such railroad or railroads or such passenger steamboat line shall furnish transportation at the rate of one cent per mile for the whole distance to be traveled for each officer or enlisted man so carried, and all station or ticket agents or conductors shall sell first-class tickets or furnish first-class passage at the rate named, upon being notified that such officer or officers or enlisted men are traveling upon military duty. Such notification may be by telegraph or by filing a copy of the order with such station or ticket agent or conductor, or upon presentation of a requisition for military transportation. Whenever it shall be necessary to transport the stores, materials, camp equipment, horses or arms belonging or pertaining to the military establishment of this state or any portion thereof, the railroad or railroads or steamboat line of this state over which
Rates.	
First class.	
Notification.	
Stores, materials, etc.	

the same may be transported shall charge not to exceed one-half the rate charged for the same class of goods to other shippers. Rate charged.

This section of the general revision of the military laws supersedes Act No. 201 of 1889 and Act No. 204 of 1901, on the same subject.

An Act to encourage rifle practice in the organized militia of Michigan, and to provide for the regulation of passenger fares charged by street car and interurban railroads to members of the organized militia of Michigan, going to and from rifle ranges.

[Act 199, P. A. 1909.]

The People of the State of Michigan enact:

(611) SECTION 1. The range officer in charge of any rifle range established for the use of the organized militia of Michigan, if it is necessary or convenient for members thereof to travel over any street railroad or interurban railroad to go to or return from said range, shall designate a point at which said members shall be allowed to disembark and embark. Every street car or interurban passenger car, whether a regular, special or limited car, shall hereafter stop at the point designated by the range officer to allow members to disembark or embark for the purpose of going to the range for instruction in small arms practice. The provisions of this act shall not be binding on any street railway or interurban railroad, unless the members of the organized militia presenting themselves as passengers are in uniform at the time, and the provisions of this section shall not apply to a special car hired by other persons for a special purpose. Range officer to designate embarkment points, etc.
Cars to stop.
When provisions not binding.
Special cars.

(612) SEC. 2. No street railway or interurban railroad shall charge any member of the organized militia, if the member is in uniform and presents himself in uniform as a passenger enroute to a rifle range and returning to the home station, a sum to exceed one cent per mile for car fare. If the route traveled is partly over a street car line and partly over one or more interurban lines, or if the route is partly over the lines of two or more interurban railroads the total fare shall be computed at the rate of one cent per mile for each mile traveled. If the total mileage is less than five miles, the fare may be fixed at a minimum of five cents: Provided, That said fare shall be prorated to the various street car companies or interurban companies in accordance with the number of miles traveled over each line. Car fare.
Transfers.
Minimum fare.
Proviso, prorated.

An Act making it unlawful for any common carrier, innkeeper or proprietor or lessee of any place of public amusement or entertainment, or any agent, servant or representative of any such common carrier, inn-keeper, proprietor or lessee as aforesaid, to debar from the full and equal enjoyment of the accommodations, advantages, facilities or privileges of any public conveyance on land or water, or any inn or place of public amusement or entertainment, any person in the military or naval service of the United States or of this state, and providing a remedy for such disbarment.

[Act 105, P. A. 1909.]

The People of the State of Michigan enact:

Amusements,
etc., debar-
ment from.

(613) SECTION 1. It shall be unlawful for any common carrier, inn-keeper or proprietor or lessee of any place of public amusement or entertainment, or any agent, servant or representative of any such common carrier, inn-keeper, proprietor or lessee as aforesaid, to debar from the full and equal enjoyment of the accommodations, advantages, facilities, or privileges of any public conveyance on land or water, or any inn or of any place of public amusement or entertainment any person in the military or naval service of the United States or of this state, wearing the uniform prescribed for him at that time or place by law, regulation, or the service or custom, on account of his wearing such uniform, or of his being in such service.

May recover
damages, etc.

(614) SEC. 2. Any person who is debarred from such enjoyment contrary to the provisions of section one of this act, shall be entitled to recover in an action on the case from any corporation, association or person guilty of such violation, his actual damages and one hundred dollars in addition thereto; and evidence that said person debarred was at the time sober, orderly and able and willing to pay for said enjoyment in accordance with the rates fixed therefor for civilians, shall be prima facie evidence in said action that he was debarred on account of his wearing such uniform or of his being in such service.

An Act regulating the charges for transporting loaded or empty cars from or to the side [tracks] track of any manufacturing or other establishment located on the line of any railroad, and for transporting such cars to the main line or side tracks of any other railroad.

[Act 252, P. A. 1889.]

The People of the State of Michigan enact:

Charges for
transporta-
tion.

(615) § 5246. SECTION 1. That in transporting loaded or empty cars from or to the side tracks of any manufacturing or other establishments located on the line of any railroad, no charge shall be made, and for transporting such

cars to the main line or side tracks of any other railroad, no railroad company shall charge for each of such cars to or from such side tracks a sum exceeding one dollar for each half mile of distance so transported.

An Act for the more effectual prevention of cruelty to animals.

[Extract from Act 70, P. A. 1877.]

(616) § 11742. SEC. 4. No railroad company, in the carrying or transportation of animals, shall permit the same to be confined in cars for a longer period than twenty-eight consecutive hours without unloading the same for rest, water, and feeding, for a period of at least five consecutive hours, unless prevented from so unloading by storm, or other accidental causes. In estimating such confinement, the time during which the animals have been confined without rest, on connecting roads from which they are received shall be included, it being the intention of this act to prevent their continuous confinement beyond the period of twenty-eight hours, except on contingencies hereinbefore stated. Animals so unloaded shall be properly fed, watered, and sheltered during such rest, by the owner or person having the custody thereof, or, in case of his default in so doing, then the railroad company transporting the same, at the expense of said owner or person in custody thereof; and said company shall in such case have a lien upon such animals for food, care, and custody furnished, and shall not be liable for any detention of such animals authorized by this act. Any company, owner or custodian of such animals, who shall fail to comply with the provisions of this section, shall, for each and every such offense, be liable for, and forfeit, and pay a penalty of not less than one hundred nor more than five hundred dollars: Provided, however, That when animals shall be carried in cars in which they can and do have proper food, water, space, and opportunity for rest, the foregoing provisions in regard to their being unloaded shall not apply.

Limit of time animals may be confined on railroad cars.

Animals unloaded to be fed, etc.

Penalty.

Proviso.

An Act to regulate and provide for the carrying, yarding and feeding of so-called Texas cattle while in transit into or across this state between the first day of April and the first day of November of each year.

[Act 198, P. A. 1885.]

The People of the State of Michigan enact:

Transportation across, yarding, etc., of certain cattle, unlawful.

(617) § 5650. SECTION 1. That it shall not be lawful to transport any neat cattle into or across this state, yard or feed the same, that have been reared or kept south of the thirty-sixth parallel of north latitude, and that have not subsequently been kept continuously at least one winter north of said parallel, and which may be brought within the limits of this state between the first day of April and the first day of November, following, except in the manner hereafter provided.

Duty of railroad transporting certain cattle.

(618) § 5651. SEC. 2. It shall be the duty of all railroad companies doing business in this state to receive and transport while in this state, the class of cattle mentioned in section one, only in cars that are branded or lettered legibly and distinctly and in plain view, the words "For the transportation of Texas cattle only;" and they shall not permit or allow any other class of cattle to enter those cars between the first day of April and the first day of November following: Provided, That cattle coming from other states for transportation through this state when it is impossible to ascertain where they came from may be shipped in such cars, but shall be treated in all respects as coming from the country south of the thirty-sixth parallel of north latitude.

Proviso.

Care of certain cattle at stock yards.

(619) § 5652. SEC. 3. It shall be the duty of any railroad company, stock yard company, or private individual owning and operating any stock yard in this state, to receive and feed the class of cattle mentioned in section one only in yards separate and apart from yards used for the feeding or yarding of other cattle; and these yards shall be in the immediate vicinity and contiguous to a railroad side track so that these cattle may not pass over any open common that might be crossed by other cattle; and said yards shall have a sign posted at each entrance thereto, on which shall be plainly lettered "For the yarding of Texas cattle only," and no other cattle shall be admitted to these yards between the first day of April and the first day of November of each year.

Location of such yards; passage to.

Entrance sign.

Penalty for violation.

Fine.

(620) § 5653. SEC. 4. Any railroad company, stock yard company, or private individual owning any stock yard in this state, who shall violate any of the provisions of sections one and two of this act, shall forfeit and pay to the people of the state of Michigan not less than fifty dollars nor more than five hundred dollars for each and every such

offense, and shall be liable for any and all damages caused to any neat cattle by their failure to comply with the requirements of this act. Liability for damages.

(621) § 5654. SEC. 5. Any person or person [persons] who shall knowingly or wilfully place or attempt to place any neat cattle, or others than those mentioned in section one, in any car or yard provided for in section two or three of this act, and branded and lettered as therein provided for between the first day of April and the first day of November following, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than ten dollars, nor more than one hundred dollars or be imprisoned not less than ten days nor more than sixty days, or both such fine and imprisonment in the discretion of the court. Certain violation a misdemeanor. Punishment.

An Act to promote the safe transportation of explosives and other dangerous articles and to provide penalties for its violation.

[Act 182, P. A. 1909.]

The People of the State of Michigan enact:

(622) SECTION 1. It shall be unlawful to transport, carry or convey any dynamite, gunpowder or other explosive between any places within the state of Michigan on any vessel, car or vehicle of any description, operated by a common carrier, which vessel, car or vehicle is carrying passengers for hire: Provided, That it shall be lawful to transport on any such vessel, car or vehicle small arms ammunition in any quantity, and such fuses, torpedoes, rockets or other signal devices as may be essential to promote safety in operation, and properly packed and marked samples for laboratory examination, not exceeding a net weight of one-half pound each, and not exceeding twenty samples at one time in a single vessel, car or vehicle; but such samples shall not be carried in that part of a vessel, car or vehicle which is intended for the transportation of passengers for hire: Provided further, That nothing in this section shall be construed to prevent the transportation of military or naval forces with their accompanying munitions of war on passenger equipment vessels, cars or vehicles: Provided further, That this act shall not be construed to apply to the transportation of benzine, naphtha, gasoline or kerosene. Explosives, certain transportation of, unlawful. Proviso, laboratory samples. How marked, etc. Where carried. Further proviso, benzine, etc.

(623) SEC. 2. The regulations formulated by the interstate commerce commission, pursuant to section two of an act of congress, public numbered one hundred seventy-four, approved May thirty, nineteen hundred eight, shall be binding upon all common carriers engaged in intrastate commerce. Intrastate commerce.

within the state of Michigan, which transport explosives by land.

Liquid nitro-glycerine, etc.

(624) SEC. 3. It shall be unlawful to transport, carry or convey liquid nitro-glycerine, fulminate in bulk in dry condition, or other like explosive between any places within the state of Michigan, on any vessel, car or vehicle of any description operated by a common carrier in the transportation of passengers or articles of commerce by land or water.

Marking of explosives.

(625) SEC. 4. Every package containing explosives or other dangerous articles when presented to a common carrier for shipment shall have plainly marked on the outside thereof the contents thereof, and it shall be unlawful for any person, partnership or corporation to deliver for transportation to any common carrier engaged in commerce by land or water, or to cause to be delivered or to carry any explosive or other dangerous article, under any false or deceptive marking, description, invoice, shipping order or other declaration, or without informing the agent of such carrier of the true character thereof, at or before the time such delivery or carriage is made.

False or deceptive.

Penalty.

(626) SEC. 5. Any person, partnership or corporation who knowingly violates or causes to be violated any of the foregoing provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished for each offense by a fine not exceeding two thousand dollars or by imprisonment not exceeding eighteen months, or by both such fine and imprisonment in the discretion of the court.

Sec 6 repeals Act No. 139 of 1873, C. L., § § 11516-18, and all other contravening acts.

TRANSPORTATION OF GAME.

[Extract from Act 268, P. A. 1897, as amended.]

Transportation.

(627) SEC. 9. It shall not be lawful for any railroad company, express company, boat or other transportation company to transport any deer or part of a deer from one place to another in this state unless the shipper shall produce his license as provided in this act and sign and detach one coupon therefrom and attach the same to such deer or part thereof offered for shipment, in the presence of the shipping agent, and if he cannot write he shall sign by his mark, which agent shall sign such coupon as a witness and such coupon shall accompany said deer or part thereof to its destination: Provided, That any person killing any deer shall immediately after killing same, attach the self sealing metal tag or seal which contains the number of license held by such person, to some part of such deer in a secure and permanent manner and no deer shall be offered for shipment, shipped or received for shipment by transportation companies unless this metal license tag shall be attached to such deer

Proviso, attachment of tag.

when presented for shipment and the coupon herein provided for attached in the presence of the shipping agent as required by this section.

Am. 1915, Act 249.

The above section is taken from "An act to regulate and license the use of firearms in hunting for and killing deer protected by the laws of this state and providing a penalty for its violation."

TRANSPORTATION OF FISH.

[Extract from Act 170, P. A. 1905.]

(628) SEC. 4. No person shall sell or ship or cause to be sold or shipped or transported, and no person or corporation shall transport any such brook trout or rainbow trout, unless there shall be made, in duplicate, a bill of lading describing such shipments, signed by the carrier, or his or its agent, showing the true date of such shipment, and to which shall be attached a true invoice or bill of sale of such fish, which shall set forth approximately the number and the true aggregate weight of the fish sold, the name and residence of the seller, shipper or consignor, and of the purchaser, or consignee, nor unless the package containing such fish shall be plainly marked with the name and address of the consignee, the name of the shipper, and that it contains brook trout or rainbow trout. Said package shall contain no other kind of fish whatever. The seller or shipper of such trout shall, within twenty-four hours after the sale or shipment is made as aforesaid, forward one copy of such bill of lading and invoice to the state game warden, by mail, at such place as he shall direct, or deliver the same to him in person, and the other copy to the consignee; and within six days after the receipt of such fish, if sold to a purchaser residing in this state, such purchaser or consignee shall forward the said copy of bill of lading and invoice to the state game warden by mail at such place as he shall direct, or deliver the same to him in person, together with a true statement showing whether or not said fish described therein have been sold or what other disposition has been made of the same.

Shipment to be accompanied by bill of lading.

What to show.

Invoice attached.

Package plainly marked.

Shipper, duty of.

Copy of bill of lading, where forwarded.

The above section is taken from "An act to authorize and regulate the possession, use, transportation and sale of brook trout and rainbow trout by persons engaged in the business of propagating and rearing such fish, and by persons who purchase fish so reared, and to provide for licensing persons engaged in such business, or either branch of the same."

TRANSPORTATION OF GAME AND BIRDS.

An Act to provide for the protection of game and birds, to regulate the taking, possession, use and transportation of the same, to prohibit the sale thereof, to regulate the manner of hunting, pursuing and killing game or birds, to provide a penalty for the violation of any of the provisions of this act, and to repeal inconsistent acts and parts of acts.

[Extract from Act 275, P. A. 1911.]

The People of the State of Michigan enact:

Property of
state.

(629) SECTION 1. All wild animals and wild birds, both resident and migratory (native and introduced), found in this state, are hereby declared to be the property of the state.

Unlawful to
kill, etc.

(630) SEC. 2. No person shall at any time of the year, or in any manner take, pursue, wound or kill any wild animal or wild bird mentioned in this act, or any introduced game animals or birds, or transport, sell, offer or expose for sale, or have the same in possession, contrary to the provisions of this act: Provided, That rabbits lawfully killed may be transported and sold.

Proviso,
rabbits.

Am. 1913, Act 167.

Unlawful to
ship.

(631) SEC. 4. No person, company or corporation shall have in possession or under control any of the birds or animals protected by the laws of this state, with intent to ship or carry the same beyond the limits of this state, nor shall ship or carry, or intentionally allow or aid in such shipment or carrying out of this state, any such birds or animals, except as expressly provided by law.

Permits for
certain
purposes.

(632) SEC. 7. The state game fish and forestry warden may in his discretion issue permits under the seal of his department to the owner, trustee or custodian of any animals or birds lawfully held in captivity to transport the same out of the state in exchange for animals or birds of other species desired for propagation or exhibition. The owner of any game animals or game birds bred and reared in captivity, may sell and transport the same at any season of the year under such regulation, prescribed by the state game fish and forestry warden as will effectually protect the wild game of the state. The state game fish and forestry warden is hereby given authority to issue the permit herein provided for upon the payment of a fee of one dollar, to be credited to the game protection fund.

Am. 1913, Act 167.

(633) SEC. 8. The state game, fish and forestry warden, Game preserves. may in his discretion, on application, and the payment of ten dollars, issue to individuals owning lands in this state, or bona fide members of clubs who own and maintain game preserves in this state, permits good for the yearly game season to carry as open hand baggage during the season twenty wild ducks or other migratory birds lawfully killed by him or them, on his or their own premises or the premises of the club of which he or they are members, to his or their respective homes out of the state. Any violation of the privileges herein given shall at once work a forfeiture of the permit granted and subject such person to the penalties provided by this act.

(634) SEC. 9. The state game, fish and forestry warden Permits for scientific purposes. may issue permits to any duly accredited agents of the United States department of agriculture, to capture, kill or ship and carry out of the state at any time of the year a limited number of specimens of the birds and animals of the state, to be used for scientific purposes.

(635) SEC. 10. No person, company or corporation, shall Possession, when unlawful. have in possession the dead body or carcass or skin or any portion thereof, of any animal or bird mentioned or referred to in this act during the time when the killing of such animal or bird is unlawful, except as authorized by law, and excepting specimens, heads or pelts prepared or mounted for scientific or educational purposes: Proviso. Provided, however, That any person may have in his possession for thirty days after the closing of the season any game or birds lawfully killed by him during the open season: Further proviso, transportation. Provided further, That no person, corporation or transportation company shall receive for transportation or have in possession at the initial billing station, the carcass or dead body of any animal or bird mentioned or referred to in this act, after forty-eight hours immediately following the closing of the time when the killing of said animal or bird is authorized by law: Further proviso. Provided, further, That any person engaged in rearing any of the game animals or game birds protected by law within an enclosure, may kill for his use and consumption at any time any of the said animals or birds, and may sell and transport alive any of the said animals or birds, and may sell and transport without the state any of said animals or birds when accompanied by a permit from the state game, fish and forestry warden; and it shall be the duty of the said state game, fish and forestry warden to issue permits on application, when satisfied that such animals or birds were so reared within an enclosure.

(636) SEC. 11. It shall be unlawful for any person Unlawful to sell, etc. directly or indirectly, to buy, sell, expose or offer for sale, any game animal or game bird, or part thereof, mentioned in this

Proviso, sale,
etc., of deer
skins, etc.

Proviso.

Further
proviso, ship-
ment of deer.

Proviso.

act, except as provided in this act: Provided, That the state game fish and forestry warden is hereby given authority to issue permits for the sale and transportation, either within or without the state, of deer skins and buck deer heads, green or mounted, at any season of the year, when satisfied that the animals from which such skins or heads were taken or killed at a lawful time in a lawful manner; each hide or head so transported or sold, shall have attached to it the original license tag while being so transported or sold, unless otherwise authorized by the state game fish and forestry warden. No game birds shall be shipped by express, freight or baggage or in any other manner, but shall be carried as open hand baggage without cover in such a manner as to be easily seen and inspected: Provided, however, That nothing in this section shall apply to the interstate carrying, as open hand baggage, of wild ducks or other migratory birds, as provided for in section eight of this act: Provided further, That deer legally killed may be shipped and transported within this state when having attached thereto the license tag provided for by law: Provided, however, That it shall be lawful to ship, and any corporation acting as a common carrier, its officers, agents or servants may lawfully ship, carry, take or transport either within or beyond the confines of this state any such animal or animals, or portion or portions thereof, which may be consigned at any station in this state to any consignee in this state, where the nearest railroad route from such shipping point to any such destination within the state, leaves the confines of the state and re-enters the same.

Am. 1913, Act 167.

Number of
game birds
may be
killed.

Number in
possession.

Number to be
killed in year.

Number of
deer.

(637) SECTION 17. No person shall take, kill or capture in one day more than the following number of any of the game birds mentioned in this act: Quail, six; partridge (ruffed grouse) and spruce hens, six; plover, six; woodcock, six, snipe and other shore birds, ten; geese, brant and ducks, twenty-five, and no person shall kill more than fifty geese, brant and ducks in one calendar week. No person shall at any time have in possession more than the following number of any of the game birds mentioned in this act: Quail, fifteen; partridge (ruffed grouse) and spruce hens, fifteen in all; plover, twenty; woodcock, twenty; snipe and other shore birds, twenty in all; geese, brant and ducks, twenty-five in all. No person shall kill in any calendar year more than twenty-five of any one kind of the following named game birds, to-wit: Quail, partridge (ruffed grouse), spruce hen, plover, woodcock, snipe and other shore birds. No person shall during the open season of any calendar year take, kill or capture more than one deer.

Am. 1913, Act 167; 1915, Act 184.

(638) SEC. 18. The following named game animals and Open season. game birds may be hunted and killed as herein provided during the periods named, which shall be the open season: Deer, November ten to November thirty, both inclusive; fox, gray and black squirrels, October fifteen to November thirty, both inclusive; rabbits or hares, October first to March first, both inclusive; quail, October first to November thirty, both inclusive; woodcock, partridge, (ruffed grouse), October first to November thirty, both inclusive; spruce hens, October first to November thirty, both inclusive; ducks, geese, brant, Wilson or jack snipe, black breasted and golden plover and yellow legs, September first to December fifteen, both inclusive; rails, coots, and gallinules, September first to November thirty, both inclusive: Proviso, squirrels. Provided, however, That fox, black and gray squirrels shall not be hunted or killed until the year nineteen hundred twenty: Further proviso. Provided further, That Mongolian or English pheasants, quail, black fowl, capercailzie, hazel grouse, spruce hens or Canada grouse, prairie chickens and wild turkey, killdeer and wading, shore and meadow birds shall not be hunted or killed until the year nineteen hundred twenty, and then only at the time, and in the manner and for the purpose authorized by law: Provided further, That wood-duck cannot be taken until nineteen hundred eighteen: Provided further, That blue heron, shell-drake, kittiwakes or terns and mergansers may be killed at any time when it can be shown that they are destroying brook trout or other fish in any of the waters of this state, by securing a permit to do so from the state game, fish and forestry warden.

Am. Id.

(639) SEC. 19. Any non-resident hunter, who by the laws Non-resident hunters. of this state is required to procure a non-resident hunter's license and who does procure same, may take from this state as open baggage a number of any or each of all said game birds equal to the number of said birds permitted to be killed by him under said license in a single day. And may ship to any point without the state, one deer or part of a deer: Provided, That he shall first obtain from the state game, Proviso, shipping permit. fish and forestry warden or his authorized deputy, a shipping permit and deliver the same to the agent at the initial point of shipment and also exhibit his license to the said agent, sign and detach the coupon therefrom and attach the same to such deer or part thereof offered for shipment, in the presence of the shipping agent, and if he cannot write he shall sign by his mark, which agent shall sign such coupon as a witness, and such coupon shall then be cancelled by such agent and accompany said deer or part thereof to its destination.

Am. 1913, Act 167.

An act to regulate drayage to and from railroads.

[Act 21, Laws of 1867.]

The People of the State of Michigan enact:

Delivery of
freight.

(640) § 5250. SECTION 1. That all freight carried by any railroad company, now or hereafter existing under the laws or doing business in this state, shall be deliverable to the consignee thereof at the depot or station of such company, in the place where the same shall be directed, unless the consignee or consignees thereof shall consent to the delivery of the same at his or their place or places of business, or elsewhere, by the drays or trucks owned or employed by said railroad company: Provided, That immediately or within a reasonable time after the arrival of any such freight at its place of destination, the railroad company carrying the same shall give notice of such arrival to the consignee or consignees of such freight.

Proviso,
notice of arrival
thereof.

Drayage fees.

(641) § 5251. SEC. 2. All shippers of freight, by any of the railroad companies of this state, shall be and are hereby authorized to deliver any goods or freight they may wish to have transported on said railroads, to any of said company's depots or stations, at the usual places of deposit therefor; and it shall not be lawful for any such railroad company to charge, collect or receive any cartage or drayage on goods received for transportation, unless said goods shall have been actually carted or drayed by said railroad company, at the request of the shipper or shippers thereof; and any person or persons violating the provisions of this act, shall be deemed guilty of a misdemeanor, and punishable by fine not exceeding ten dollars.

An Act in relation to * * * the delivery of goods by, railway companies.

[Extract from Act 96, Laws of 1859.]

Delivery of
goods by rail-
way com-
panies.

(642) § 6343. SEC. 3. Every railway company in this state is authorized to make personal delivery of every parcel, package, or quantity of goods or property, if the consignee of such property shall reside within two miles of the terminus, or railway station, or other terminus of the carriage of such property by the main line of such carrier, and they are hereby authorized to employ or own all the means necessary to perform such duty, and to place the men and vehicles therefor under the government and sole regulation of the superintendent or other proper officer of such companies. Such de-

livery shall be at the house, shop, office, or other place of business of the consignee, according to the nature of such property, and where the owner or consignee desires to have the same: Provided, That in all cases where the consignor or consignee shall desire to have said property taken at the depot, station, or terminus of the carriage of the same, he shall be at liberty to do so, and on notice given, either by a party sending goods, or a party expecting to receive any that he or they so desire, they shall remain in the usual manner, and for the usual time, in the custody of said carrier, subject to the order of the owner thereof: Provided, That when the by-laws or ordinances of any municipal corporation requires any sum of money to be paid annually or otherwise, for licenses by draymen or other common carriers in each municipal corporation, said railway companies shall not have the benefit of this section without paying into the treasury of such municipal corporation such sum or sums of money for each and every of the drays or other vehicles of carriage, for the delivery of goods provided for in this section, as may be provided in said by-laws or ordinances for licensed draymen, and other like common carriers.

Proviso,
goods to be
subject to or-
der of owners.

Proviso,
payment of
license.

An Act relative to the delivery of grain by railway companies.

[Act 177, P. A. 1881.]

The People of the State of Michigan enact:

(643) § 5249. SECTION 1. That all railway companies receiving or transporting grain in bulk, or otherwise, shall deliver the same to any consignee thereof or to any elevator or public warehouse to which it may be consigned for a reasonable compensation. And any bill of lading, receipt or contract releasing such railway company from the responsibility or liability to deliver the same amount by weight as they received from the consignor shall be void: Provided, Such consignee, or the elevator, or the public warehouse can be reached by any track owned, leased, or used, or which can be used by such railway company; and all railway companies shall permit connections to be made with their track so that any consignee, and any elevator, and any public warehouse may be reached by the cars on said railway: And provided further, If any such corporation shall, upon the receipt by it of any grain for transportation, neglect or refuse to weigh and receipt for the same, the sworn statement of the shipper, or his agent having personal knowledge of the amount of grain so shipped, shall be taken as prima facie evidence of the amount shipped.

Duty of rail-
way compa-
nies relative
to transport-
ing grain.

Proviso.

Further
proviso.

An Act to provide for the better protection of lives of passengers and employes on railroad trains.

[Act 118, P. A. 1887.]

The People of the State of Michigan enact:

Companies to make provisions against the burning of cars, etc.

Methods of heating.

Proviso.

Power and duty of commission in relation to.

How provisions of this act may be enforced.

(644) § 5508. SECTION 1. That on and after the first day of November, eighteen hundred and eighty-nine, every railroad company owning or operating any railroad wholly or partly within this state, shall make some effective provision against the burning of cars in which passengers are carried, or of cars which form part of passenger trains, in some one or more of the following, or other equally effective, methods: By generating the heat for warming the cars outside and independent of said cars, or by the use of heaters in the cars, so constructed that in case of accident, it will be practically impossible for the fire to escape from the stove or heater so as to set fire to the cars, or provided with some automatic or quickly and easily operated provision for extinguishing fire, and when the heat is generated outside of the cars, heaters constructed as provided for in this section may be retained within for use in case of emergencies: Provided, That the provisions of this section shall not apply to caboose cars on freight trains.

(645) § 5509. SEC. 2. No device shall be adopted for general use until approved by the commissioner of railroads (railroad commission), and he shall have the power, and it is hereby made his duty to order any stoves or heaters removed, which, in his judgment, are unsafe in case of accident. And he is hereby empowered to use such reasonable means to provide for carrying out the spirit of this law to promote the safety of passengers and employes in railway cars, as the condition of the road and experience in the use of the various methods of heating have demonstrated to be practicable and necessary.

(646) § 5510. SEC. 3. The provisions of this act may be enforced by any circuit court of this state in any county through which the railroad of any company refusing to comply with such provisions may run, upon the application of the commissioner of railroads (railroad commission), under such penalty as the said court may determine, of not less than one hundred dollars for each violation of the provisions of this act.

An Act requiring railroad companies to equip cabooses or waycars with end platforms and platform steps; providing a penalty for the violation of this act; making railroad companies liable for damages caused or resulting from a violation of this act; and making it the duty of the Michigan railroad commission to enforce its provisions.

[Act 52, P. A. 1909.]

The People of the State of Michigan enact:

(647) SECTION 1. From and after January one, nineteen hundred ten, it shall be unlawful for any railroad company, operating railroad lines within the state of Michigan, to use or operate, or cause to be used or operated, over any part of its lines within the state of Michigan, any caboose or waycar which is not fully equipped with end platforms and platform steps, said platform and platform steps to be of substantial construction to be approved by the Michigan railroad commission. Relative to car equipment.

(648) SEC. 2. If any railroad company operating any railroad line within the state of Michigan which shall use or operate, or cause to be used or operated, over any part of its lines within this state any caboose or waycar not equipped with end platforms and platform steps it shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars in the discretion of the court. Conviction; fine therefor.

(649) SEC. 3. In addition to the liability prescribed in section two hereof, any railroad company violating any of the provisions of this act shall be liable in civil damages for all damages caused or resulting from a violation of any of its provisions. Liability for violation.

(650) SEC. 4. It shall be the duty of the Michigan railroad commission to enforce the provisions of sections one and two of this act. Duty of commission.

An Act to provide for the better protection of human life on railroad trains.

[Act 167, Laws of 1871.]

The People of the State of Michigan enact:

(651) § 5505. SECTION 1. That every railroad company running trains upon any railroad within the limits of this state, or any portion thereof, shall provide and carry at each end of each and every car owned or used by said company for the conveyance and carriage of passengers, baggage, mail, or express, a good and serviceable axe, of not less than three Company to provide passenger cars with axe and saw.

To carry lifting jacks.

Penalty for non-compliance.

Penalty for removing and carrying away tools, etc.

pounds weight, properly sharpened, provided with a proper helve or handle, and at all times in a condition for immediate use; also, a good and serviceable carpenter's saw, with not less than twenty-four inch cut, also properly fitted and at all times in a condition for immediate use, each of which implements shall be suspended by brackets or straps upon the inside of each car, near the door thereof, and within easy view, reach and access of passengers occupying said car; also in the baggage-car or engine of each train of which any car for the conveyance of passengers forms a part, two or more lifting jacks or screws, of not less than fourteen inch lift and of sufficient power to readily lift one end of any loaded car attached to said train, and each of which shall be so carried and secured as to be within easy view, reach, and access.

(652) § 5506. SEC. 2. In case any railroad corporation shall run any train of cars within the limits of this state for the carriage and transportation of passengers, or upon which passengers are transported, without carrying the implements and tools prescribed in section one of this act, in the manner therein particularly described, it shall be liable to a penalty of fifty dollars and cost of prosecution for each and every train so run, to be sued for in the name of the people of this state; and such railroad corporation shall also be liable for all damages which shall be sustained by any person by reason of such neglect.

(653) § 5507. SEC. 3. Any person or employe of any railroad company who shall remove or carry away from their proper place, except in case of an accident, the tools required to be kept in the passenger, baggage, mail, or express cars, by the provisions of this act, shall be deemed guilty of an offense, and upon conviction thereof may be punished by a fine not exceeding fifty dollars or imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment at the discretion of the court.

An Act to provide for sanitary conditions in railroad passenger coaches and in railroad depots and vessels.

[Act 210, P. A. 1909.]

The People of the State of Michigan enact:

Expectoration.

(654) SECTION 1. It shall be unlawful for any person to expectorate upon the floor, platform or the interior furnishings, except cuspidors, of a steam railroad, passenger or street railway car, or upon the floor, furnishings, registers or radiators of any passenger station or public waiting room.

Any person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than twenty-five dollars or imprisonment not to exceed sixty days, or both such fine and imprisonment in the discretion of the court: Provided, however, That no person shall be prosecuted under the provisions of this section unless its provisions are posted in a conspicuous place in such cars, stations and public waiting rooms, and suitable cuspidors are furnished.

Penalty.

Proviso,
prosecution.

(655) SEC. 2. It shall be the duty of railway companies to see that every passenger coach is kept at a uniform temperature, not less than sixty nor more than seventy degrees, and that provision for ventilation shall be constantly in use to provide a sufficient amount of fresh air for the passengers.

Temperature,
ventilation,
etc.

(656) SEC. 3. Every passenger coach shall be provided with a supply of good wholesome drinking water. When ice is used to cool the water, it shall be kept in a separate receptacle. These tanks shall be thoroughly cleaned at the terminus of every trip, and shall be kept constantly covered.

Drinking
water.
Ice in
separate
receptacle.

(657) SEC. 4. All toilet rooms, water closets, urinals and toilet appliances in railway coaches and depots are to be scrubbed with soap and hot water and disinfected with an approved disinfectant each day. All closets (outhouses) at railway stations shall be kept clean and in good repair to be suitable at all times for the use of the traveling public. The vaults shall receive a daily treatment of fresh lime or other approved disinfectant, and the contents removed at least once each month.

Toilet rooms,
etc., care of.Closets at
stations.

(658) SEC. 5. Every passenger coach while in regular use, shall be thoroughly cleansed and disinfected at least once each month. If a car becomes infected by being occupied by a person having a dangerous communicable disease, it shall not again be opened for the reception of other passengers than the ones already in it; and at the end of the trip it shall be disinfected before it is again used for passenger traffic. In cases of public exposure of this kind on railway trains, it shall be the duty of the railway authorities to report the facts to the state board of health, giving the names and destination of each exposed passenger that occupied the same car as the infected person.

Disinfection
of coaches.

Report of.

(659) SEC. 6. Every passenger coach operating in this state, and every vessel navigating upon the rivers and inland lakes of the state, or entering her lake harbors, shall be provided with urinals and closets of such form as will secure the sterilization of all discharges entering them; and the same shall be known as the "Aseptic closet and urinal." The form of the urinal and closet, including the method of sterilization, shall have the approval of the state board of health before adoption.

Urinals,
sterilization,
approval of.

Penalty for
violation of
act.

(660) SEC. 7. In case any railroad or vessel company operating in this state, shall neglect or refuse to carry out the provisions of the preceding sections, it shall be liable to a penalty of one hundred dollars and cost of prosecution for each and every passenger train so run, to be sued for in the name of the people of the state of Michigan.

SANITARY CONDITIONS IN RAILWAY CARS USED FOR SLEEPING PURPOSES, ETC.

[Extract from Act 285, P. A. 1909.]

Wash and
dressing
rooms.

Closets or
privies.

Distinction of
sexes.

Heat and
ventilation.

Cars, sanitary
regulations.

Prosecutions.

Proviso,
sleeping cars.

(661) SEC. 17. Every manufacturing establishment, workshop, hotel or store in which five or more persons are employed, and every institution in which two or more children, young persons or women are employed, shall be supplied with proper wash and dressing rooms, and kept in a cleanly state and free from effluvia arising from any drain, privy or other nuisance, and shall be provided, within reasonable access, with a sufficient number of proper water closets, earth closets or privies for the reasonable use of persons employed therein, at least one of such closets for each twenty-five persons employed; and whenever two or more persons and one or more female persons are employed as aforesaid, a sufficient number of separate and distinct water closets, earth closets or privies shall be provided for the use of each sex, and plainly so designated, and no person shall be allowed to use any such closet or privy assigned to persons of the other sex. In all hotels where sleeping rooms are provided for female help, such rooms shall have proper heat and ventilation. Where railway cars are used for sleeping or living purposes or where other premises for sleeping or living accommodations are furnished by any employer or his agent, for men or women engaged in construction of railroad or other work, such cars or other premises shall be maintained in a cleanly and sanitary condition and kept sufficiently heated and well lighted and ventilated and a separate place and facilities shall also be provided for the purpose of drying clothes. Any firm, person or corporation or any agent or foreman thereof, or any contractor or other person who has control over such conditions may be prosecuted at the instance of the factory inspector or other proper authority when there occurs a violation of this section with respect to the conditions specified therein, over which such person, firm or corporation has control. It shall be unlawful for any employe to do anything to hinder or make difficult, compliance with this section: Provided, That the provisions of this section shall not apply to railway sleeping cars used exclusively for the transporta-

tion and accommodation of passengers carried by said railways.

Am. 1915. Act 3.

An Act to provide for the safety of brakemen and other employes on railroads.

[Act 190, P. A. 1881.]

The People of the State of Michigan enact:

(662) § 5513. SECTION 1. That wherever in the state of Michigan there shall be over, above, or across any of the tracks of any railroad a bridge, crossing, viaduct, or other obstruction at a height of less than seven feet above the roof of the freight cars used on or hauled over said road; and whenever [wherever] there shall be upon any railroad in the state of Michigan any bridge or other structure that shall have over or above any track of said road a transverse beam, girder, rod, or other obstruction at a height less than that above mentioned, it shall be the duty of the officers of such railroad to erect and keep in repair at or near such bridge, crossing, viaduct, or other obstruction, safety guards, made and placed as provided for in section two of this act. Railroads to provide safety guards.

(663) § 5514. SEC. 2. The safety guards mentioned in section one of this act shall consist of a transverse rod, beam, or timber placed across the track or tracks of said railroad at such a height and at such distance from the bridge, viaduct or other obstruction, as the commissioner of railroads (railroad commission) shall direct; and from said rod or beam shall be suspended straps, ropes or cords of such size and of such length as the said commissioner (commission) shall also direct. The said ropes or cords shall be attached to said transverse rod or beam at a distance not greater than nine inches from each other, for the space of eight feet directly over the track. Said guards shall be placed upon each side of such bridge, viaduct, or other obstruction: What safety guards to consist of. Provided, Proviso. That if two such bridges or other obstructions shall be at a less distance apart than one hundred feet, then no guard shall be required between them.

(664) § 5515. SEC. 3. Any railroad company, lessee or other person or persons operating any railroad that shall refuse or neglect to erect the guards required by this act for the space of sixty days after notice from the commissioner of railroads (railroad commission) requiring the erection of such guards, shall be subject to a fine of not less than fifty or more than one hundred dollars, to be collected at the suit of the people of this state by the prosecuting attorney of each county wherein such bridge or obstruction may be situated, Penalty for neglect.

and for every twenty days delay thereafter in erecting such guards such company or person shall be liable to the same fine, to be collected as above provided.

An Act to promote the safety of employes and travelers upon railroads, by compelling common carriers in this state to equip their cars with automatic couplers and to provide a penalty for violations hereof.

[Act 234, P. A. 1907.]

The People of the State of Michigan enact:

Unlawful to use cars without automatic couplers.

Proviso as to certain cars.

(665) SECTION 1. It shall hereafter be unlawful for any common carrier owning or operating any portion of a railroad wholly or partly in this state to haul or permit to be hauled or used on its line within this state any car used in moving traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars: Provided, That nothing in this act contained shall apply to trains composed of four-wheeled cars or to trains composed of eight-wheeled standard logging cars where the height of such car from top of rail to center of coupling does not exceed twenty-five inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs.

An employee, who violated the rules of the company in endeavoring to couple cars, found guilty of contributory negligence.—Coke v. M. C. R. Co., 177 / 260.

A logging train, which consists in part of cars with couplers more than 25 inches above the rails, must have automatic couplers, not being within the exception.—Betterly v. Railroad Co., 158 / 385. See Baker v. M. C. R. Co., 169 / 609.

Penalty for violation.

(666) SEC. 2. Any such common carrier hauling or permitting to be hauled or used on its line any car in violation of the provisions of this act shall be liable to a penalty of not more than one hundred dollars for each and every such violation, to be recovered in an action of assumpsit brought in the name of the people of this state, and it shall be the duty of the prosecuting attorney of the proper county to bring any such action at the request of the commissioner of railroads (railroad commission).

Sec. 3 repeals Act No. 147 of 1885, §§ 5511-12, C. L. 1897.

Nichols v. C. & N. W. R. Co., 125 / 394; De Cair v. M. & G. R. R. Co., 133 / 578; Blanchard v. D. & M. Ry. Co., 139 / 694; Wight v. M. C. R. Co., 161 / 216; Van Leuvan v. Ann Arbor R. Co., 167 / 355.

An Act to regulate the height of bridges over railroad tracks.

[Act 167, P. A. 1877.]

The People of the State of Michigan enact:

(667) § 6324. SECTION 1. No bridge hereafter constructed over any railroad in this state, except in cities and villages having power under their charters to regulate the height of such bridges, shall be at a height less than eighteen feet above the track of such railroad, except by the written consent of the commissioner of railroads (railroad commission); and any corporation managing, controlling, or operating any railroad in this state, the track of which is crossed by any bridge constructed less than eighteen feet above such track, except such bridge have the written approval of the commissioner of railroads (railroad commission), or be within the corporate limits of any city or village empowered by its charter to regulate the height of bridges, shall, within ninety days after this act shall take effect, raise or reconstruct such bridge in such manner that it shall be at least eighteen feet above such railroad track, and construct suitable approaches to such bridge. A failure on the part of any corporation, to comply with the provisions of this section, shall render such corporation liable to a forfeiture of five hundred dollars, to be recovered as in other cases of forfeiture: Provided, That the provisions of this act shall not apply to railroad bridges crossing another railroad track.

Height of bridges over railroads.

Penalty for failure.

Proviso.

An Act to protect the lives and property of persons at the crossing of railroads and public highways, within the state of Michigan.

[Act 136, P. A. 1897.]

The People of the State of Michigan enact:

(668) § 5500. SECTION 1. It shall be and is hereby made the duty of all railroad companies operating any railroad within this state and of the officers and managers thereof, to erect and maintain near all crossings of highways, when the commissioner of railroads (railroad commission) shall so order, an automatic bell signal to be operated by moving trains, such bell to be of sufficient weight and vibration to be distinctly heard at a distance of at least twenty rods, and constantly to keep and maintain any such automatic bell in good order and repair.

Railroad companies to erect and maintain automatic bell-signal at crossings.

(669) § 5501. SEC. 2. It shall be the duty of the commissioner of railroads (railroad commission) whenever applied to by petition signed by at least ten freeholders of this state using any crossing and duly verified, setting forth that

Railroad commission, when petitioned to investigate crossings.

When to order automatic bell-signal at crossings.	any railroad crossing, giving its location and situation, is dangerous to the traveling public; to proceed forthwith to investigate the same, and if he shall find the said petition to be true and the said railroad crossing be so located and situated as to be dangerous or likely to be injurious to the traveling public he shall forthwith order and require the railroad company or companies whose duty it is to maintain any such crossing, forthwith to erect at any such railroad crossing an automatic bell signal of the kind mentioned in section one of this act; all such orders shall be in writing and shall require the railroad company to cause the said automatic bell signal to be erected within thirty days from the service of the same upon any such railroad company. Any such order may be served in the same manner as now provided for the service of original writs upon railroad companies or by delivering a copy thereof to any of the principal officers of any such railroad company, and the said commissioner shall determine and state in the said order the manner of erecting any such signal, giving the distance away from any such crossing a railroad train shall be when the signal bell shall commence to ring and sound its warning.
Order to be in writing.	(670) § 5502. SEC. 3. This act shall not be construed to apply to crossings guarded by flagmen or other protection under the management and care of some servant in the employ of such railroad company.
Manner of erecting signal.	(671) § 5503. SEC. 4. Any railroad company which shall neglect or fail to comply with the provisions of this act or with the order of the railroad commissioner (railroad commission) made in pursuance of the authority in him vested, shall be liable for all damages sustained by reason thereof and also to a penalty of ten dollars for each and every day they shall so neglect to erect any such automatic bell after the expiration of the time stated in any such order of the commissioner (commission), to be recovered in an action of debt or assumpsit in the name of the people of this state.
What crossings exempt.	(672) § 5504. SEC. 5. It shall be the duty of the prosecuting attorney of each of the counties of this state and also of the attorney general, in case suit is not brought by the prosecuting attorney, to sue for and collect any such penalty; all moneys collected on account of such penalties shall be paid to the state treasurer.
In case of failure to comply, to be liable for damages.	
Penalty.	
Prosecution, by whom brought.	

An Act to prohibit railroad companies from carrying on passenger trains any kerosene, benzine, naphtha, gasoline, or any inflammable oil or fluid, other than as may be necessary to light, lubricate, or propel, the train, or cars, on which such oil is carried.¹

[Act 191, P. A. 1881.]

The People of the State of Michigan enact:

(673) § 11522. SECTION 1. It shall not be lawful for any railroad company or other person, firm or corporation owning or operating any railroad within this state to carry upon any passenger train any kerosene, benzine, naphtha, gasoline, or inflammable oil or fluid, other than such as may be necessary for lighting, lubricating, or propelling, the train, or cars, on which such oil is carried: Unlawful to carry inflammable fluids. Provided, That nothing in this act contained shall prohibit express companies from carrying such articles in quantities not exceeding five gallons when properly packed and labeled, nor the transportation of kerosene, benzine, naphtha, gasoline, or inflammable oil or fluid on cars other than passenger cars in mixed trains carrying passengers and freight on roads which do not regularly operate exclusive freight trains. Proviso.

Am. 1909, Act 51.

(674) § 11523. SEC. 2. Any railroad company, or other person, who shall violate any of the provisions of section one of this act, shall forfeit the sum of two hundred dollars for each and every offense. Penalty.

DESTRUCTION OF NOXIOUS WEEDS.

[Extract from Act 283, P. A. 1909.]

CHAPTER XXIV.

(675) SEC. 9. All railroad corporations or gravel or plank road companies doing business in this state shall, each year, between the fifteenth day of June and the first day of July, and again between the tenth day of August and the first day of September, and at any time during the year so often as shall be sufficient to prevent Canada thistles, milkweed, wild carrots, ox-eye daises, or other noxious weeds going to seed, cause all Canada thistles, milkweed, wild carrots or other noxious weeds growing upon lands occupied by them in any city, village or organized township in this state to be cut down and destroyed. In case any railroad company or gravel or plank road company shall refuse or neglect to comply with the requirements specified in the second section of this chapter, then it shall be lawful for said overseer of Railroad, etc., to destroy weeds. When overseer to destroy weeds.

¹Title amended by Act No. 51 of 1909.

highways to cut and destroy said Canada thistles, milkweed, wild carrots, or other noxious weeds between the first day and the fifth day of July, inclusive, and between the first and fifth days of September, inclusive, in each year or so often as shall be sufficient to prevent said Canada thistles, milkweed, wild carrots, or other noxious weed going to seed to endanger the spread thereof, at the expense of the corporation on whose lands said Canada thistles, milkweed, wild carrots, or other noxious weeds shall be so cut, at the rate of three dollars per day for the time necessarily occupied in cutting and destroying, to be recovered in any court of competent jurisdiction in this state.

Compensation.

SPARK ARRESTERS ON ENGINES.

[Extract from Act 249, P. A. 1903.]

Railroad companies, duty

(676) SEC. 12. It shall be the duty of all railroad companies operating any railroad within this state, to use efficient spark arresters on all their engines and to keep their right of way to the width of fifty feet on each side of the center of the main track cleared of all combustible material and safely dispose of the same within said limits of their right of way between the fifteenth day of April and the first day of December. No railroad company shall permit its employes to leave a deposit of fire or live coals or hot ashes in the immediate vicinity of woodland or lands liable to be overrun by fires, and where engineers, conductors or trainmen discover that fences or other materials along the right of way or woodland adjacent to the railroad are burning or in danger from fire, they shall report the same promptly at the next telegraph station at which an operator is on duty. In season of drought, railroad companies shall give particular instruction to their employes for the prevention and prompt extinguishment of fires, and they shall cause warning placards furnished by the forestry commissioner to be posted at their stations in the vicinity of forests and grasslands, and where a fire occurs along the line of their road, they shall concentrate such help and adopt such measures as shall be available to effectively extinguish it. Any railroad company wilfully violating the requirements of this shall be deemed guilty of a misdemeanor, and be punished by a fine not exceeding one hundred dollars for each such offense, and railroad employes wilfully violating the requirements of this section shall be guilty of a misdemeanor, and be punished by a fine of not less than five dollars nor more than fifty dollars, and in default of the payment of such fine and costs of prosecution, shall be committed to the county jail for a period not exceeding ninety days. But this section shall not be construed to prohibit or prevent any railroad company from piling or keeping upon the right of way, cross ties or other material necessary in the operation or maintenance of such railroad:

Engineers, etc., to report fires.

Prevention and extinguishment.

Penalty.

Construction of section.

Provided, That for the purpose of this act the term "railroad company" shall include any and all railroad companies, logging road companies or any and all companies which operate a steam locomotive at any time or place outside of the limits of incorporated cities and villages.

Proviso, railroad company defined.

Am. 1915, Act 221.

The above section is taken from "An act to provide for the preservation of the forests of this state and for the prevention and suppression of forest and prairie fires."

An Act to regulate the construction of the tracks of railroads and street railroads across each other, and the stringing of wires, electric or other, over railroad tracks, and relative to the maintenance of such tracks heretofore so constructed and wires heretofore so strung.

[Act 171, P. A. 1893.]

The People of the State of Michigan enact:

(677) § 6349. SECTION 1. It shall hereafter be unlawful for any railroad company to construct its tracks across the tracks of any street railroad or for any street railroad company, whether operated by horses, cable, electricity or other motive power, to construct its tracks across the tracks of any railroad company or across the tracks of any other street railroad company until the place where and the manner in which such crossing shall be made shall have been approved by the commissioner of railroads (railroad commission).

Construction of crossings, by whom approved.

Am. 1905, Act 127.

This act is not unconstitutional as expressing two objects in its title.—Traction Co. v. Com'r of Railroads, 128/164. Power of commissioner under this act.—Id.

(678) § 6350. SEC. 2. Any railroad company or street railroad company desiring to make any such crossing shall give the company whose tracks are to be crossed notice in writing of the place where and the manner in which it desires to make such crossing, and the place where and the time when it will apply to the commissioner of railroads (railroad commission) for approval thereof, which notice shall be served at least ten days before the hearing of the proposed application.

Notice to be given in writing, etc.

(679) § 6351. SEC. 3. Such crossings shall, in all cases where the commissioner of railroads (railroad commission) deems it reasonably practicable, be made otherwise than at grade, and in accordance with plans to be approved by said commissioner (commission); and when made at grade said commissioner (commission) shall prescribe the safeguards

Crossings to be made in accordance with plans, etc.

Safeguards to be provided.

which shall be provided by the company desiring to make such crossing, to prevent accidents thereat.

This statute contemplates that there shall be a separation of grades where "reasonably practicable," but this does not mean that it should be required in all cases where physically impossible.—*Traction Co. v. Railroad Com'r*, 128 / 165.

Stringing of wires, notice to be given, etc.

(680) § 6352. SEC. 4. It shall hereafter be unlawful for any corporation or person to string any wire, electrical or other, over the tracks of any railroad company, except at such places and in such manner as shall be approved by the commissioner of railroads (railroad commission), and any corporation or person desiring to so string any wire shall give the railroad company notice in writing of the place where and the manner in which it desires to string the same, and the place where and the time when it will apply to the commissioner of railroads (railroad commission) for his approval as above required, which notice shall be served at least ten days before the time of hearing of such application.

Commission, approval of.

Duty of commission, etc.

(681) § 6353. SEC. 5. The commissioner of railroads (railroad commission) shall, as soon as possible after the passage of this act, examine the crossings of the tracks of railroads and street railroads then existing, and order such changes made in the manner of such crossings, or such safeguards for protection against accidents to be provided thereat, as in his judgment ought to be so made or provided; and shall apportion any expense incident thereto between the companies affected as he may deem just and reasonable.

When the commissioner may require the street railway company to pay a part of the expense.—*Railway v. Com'r of Railroads*, 127 / 219.

Commission to obtain information, etc.

(682) 6354. SEC. 6. Said commissioner (commission) shall also, as soon as possible after the passage of this act, either by personal examination or otherwise, obtain information as to all places where the tracks of railroads are crossed by wires strung over said tracks, and wherever, in his judgment, such wires should be raised to a greater height or other thing done with reference thereto, to guard against accidents, he shall order such change or changes to be made, and shall apportion any expense incident thereto between the companies or persons affected as he may deem just and reasonable: Provided, That in no case shall the height of any wire strung across such railroad [tracks] track, be less than twenty-two feet from the established grade of said railroad tracks.

Proviso.

A brakeman riding on top of a box car is not required at his peril to discover wires stretched across a railroad at a height less than required by this statute.—*Meyers v. Detroit & Charlevoix R. Co.*, 166 / 403.

Duty of corporations.

(683) § 6355. SEC. 7. It shall be the duty of every corporation and person to whom an order made by the commissioner of railroads (railroad commission) under this act shall be directed, to comply with such order in accordance with its terms, and for any neglect to so comply, and for any

violation of the provisions of this act, or for construction of any such crossing before the same shall have been authorized by the commissioner of railroads (railroad commission), any such corporation or person shall be liable to a penalty of two hundred and fifty dollars and to a penalty of one hundred dollars for every ten days during which said neglect shall continue, or during which such crossing shall be permitted to remain in existence without the necessary approval. Any such penalty may be recovered in an action of assumpsit brought in the name of the people of this state, and it shall be the duty of the prosecuting attorney of the proper county to bring any such action at the request of the commissioner of railroads (railroad commission).

Penalty for
neglect or
violation.

How penalty
may be
recovered.

Am. 1905, Act 127.

An Act to require street railway companies operating electric cars, cable or other cars propelled by steam, cable or electricity, to protect certain of their employes from the inclemency of the weather during certain months of the year.

[Act 9, P. A. 1895.]

The People of the State of Michigan enact:

(684) § 5522. SECTION 1. That from and after the first day of January in the year of our Lord one thousand eight hundred and ninety-six, it shall be unlawful for any person, partnership or corporation, owning or operating a street railway in this state, or for any officer or agent thereof, superintendent or having charge or control of the management of such line of railway, or the cars thereof, operating electric, cable or other cars propelled either by steam, cable or electricity, which require the constant services, care or attention of any person or persons upon the platforms of such car, to require or permit such services, attention or care of any of its employes or any other person or persons between the first day of November and the first day of April thereafter of each year unless such person, partnership or corporation, its said officers or superintending or managing agents, have first provided the platforms of said car or cars with a proper and sufficient enclosure, constructed of wood, iron and glass, or similar, suitable material, sufficient to protect such employes from exposure to the winds and inclemencies of the weather: Provided, That such enclosure shall be so constructed as not to obstruct the vision of the person operating such car, or to endanger or interfere with its safe management by the operator.

Employes
operating cars
to be pro-
tected from
weather from
November
to April.

What en-
closure to be
made of.

Proviso.

Unlawful to use cars not properly constructed.

(685) § 5523. SEC. 2. From and after January first, in the year of our Lord, one thousand eight hundred and ninety-six, it shall be unlawful for any such person, partnership or corporation so owning or operating street railways, using steam, electric or cable cars, or any superintending or managing officer or agent thereof, to cause or permit to be used upon such line of railway, between said November first and April first of each and every year thereafter, any car or cars upon which the services of any employe, such as is specified in section one of this act, is required, unless said car or cars shall be provided with the enclosure required by section one of this act.

Violation of act a misdemeanor.

(686) § 5524. SEC. 3. Any person, partnership or corporation, owning, operating, superintending or managing any such line of street railway, or managing or superintending officer or agent thereof, who shall be found guilty of a violation of the provisions of section one or two of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, and in default of payment of the same, by imprisonment in the common jail of the county in which such conviction is had until such fine shall be paid, but for a period not exceeding the term of three months. Each day that any of said person or persons, partnership, or corporation, cause or permit any of their said employes to operate such cars in violation of the provisions of sections one and two of this act, or cause or permit cars to be used or operated in violation of said section two of this act, shall be deemed a separate offense: Provided, That the provisions of this act shall not apply to cars used and known as trailing cars.

Penalty.

Proviso as to trailing cars.

Prosecuting attorney to prosecute.

(687) § 5525. SEC. 4. It is hereby made the duty of the prosecuting attorney of any county in which any such street railway is situated and operated, upon any information given him by any credible person, or upon knowledge that he may possess that any person, partnership or corporation has violated any of the provisions of this act, to promptly prosecute such person, members of such partnership or corporation for such violation.

An Act to secure greater safety and comfort for persons traveling on suburban and certain street railways.

[Act 178, P. A. 1901.]

The People of the State of Michigan enact:

Implements to be provided.

(688) SECTION 1. That every railroad company or railway company operating a suburban railroad or railway, or operating any street railroad or railway except a street

railway, the greater part of whose railroad or railway is without the limits of an incorporated city or village, shall provide and carry at one end of each and every car owned or used by such company for the convenience and carriage of passengers, a good and serviceable axe of not less than three pounds weight, properly sharpened, provided with a proper helve or handle, and at all times in condition for immediate use; also a good carpenter's saw with not less than twenty-four inch cut, also properly fitted and at all times in condition for immediate use; each of which implements shall be suspended by brackets or straps upon the inside of each car near the door thereof and within easy view, reach and access of passengers occupying such car. Such railroad company or railway company shall also provide and carry in each car a suitable water tank of reasonable size, and keep and maintain therein a reasonable supply of wholesome water for drinking purposes for the use of passengers in such car. Such railroad company or railway company shall also provide, maintain and keep in proper condition upon each passenger car a suitable water closet with proper conveniences for the use of passengers traveling upon such car: Provided, That such closet shall not be allowed to be opened or used while said car is within the corporate limits of any city or village.

Where kept.

Conveniences.

Provido.

(689) SEC. 2. In case any suburban or street railway companies or corporations shall run any train of cars or any car within the limits of this state for the carrying or transportation of passengers, and upon which passengers are transported in violation of any of the provisions of section one of this act, it or they shall be liable to a penalty of fifty dollars, and costs of prosecution, for each and every train and car so run, to be sued for in the name of the people of the state of Michigan, and such suburban or street railway company or corporation shall also be liable for all damages which shall be sustained by any person by reason of such neglect: Provided, That this act shall not apply to any street railway or suburban road that is less than twenty miles in length from terminus to terminus.

Penalty for violation.

Provido.

An Act relating to drunkenness on railway trains or interurban cars, and prohibiting the drinking of intoxicating liquor thereon as a beverage, and providing for the arrest of offenders, and penalties for violation of this act.

[Act 68, P. A. 1913.]

The People of the State of Michigan enact:

(690) SECTION 1. No person shall while in an offensive state of intoxication enter or be on or remain upon any railway train or interurban car as a passenger.

Drunkenness on train unlawful.

See section 206.

Idem, public
drinking.

(691) SEC. 2. No person shall publicly drink any intoxicating liquor as a beverage in any railway train or coach or interurban car, or give, or cause to be given to any other person therein, intoxicating liquor as a beverage, except in a compartment or place where such liquor is sold or served under the authority of a license lawfully issued.

Conductor
may arrest,
etc.

(692) SEC. 3. The conductor of any railway train or interurban car, may summarily arrest, with or without warrant, any person violating any of the foregoing provisions, and for such purpose shall have the same power and authority as any peace officer, including the power to summon assistance; and such conductor shall further have power to deliver any such person to any policeman, constable, or other public officer at the next station stop where such public officer can be found, and it shall be the duty of such officer to bring the person charged with such offense before the nearest justice of the peace or municipal court of the county where said offense was committed, and to make a complaint against such person, and such complaint made upon information and belief of said officer, shall be sufficient.

May seize
liquor.

(693) SEC. 4. The conductor of any railway train or interurban car may take from any person found violating any of the foregoing provisions, any intoxicating liquor then in possession of such person and deliver the same to the nearest station agent, giving the person from whom it was taken a receipt therefor. Upon the presentation and surrender of such receipt within ten days thereafter such liquor shall be delivered to the person presenting same, and if not so delivered within such time shall be destroyed by such station agent.

Penalty.

(694) SEC. 5. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment in the discretion of the court.

An Act to require railroads to equip locomotives with proper headlights.

[Act 77, P. A. 1913.]

The People of the State of Michigan enact:

Locomotive
headlights.

(695) SECTION 1. Every railroad corporation operating a railroad or a part of one in this state, shall on or before the first day of July, nineteen hundred fourteen, equip each of its

locomotives, except locomotives used exclusively in yard service, with a headlight of such construction, and with sufficient candle power to render plainly visible at a distance of not less than three hundred fifty feet in advance of such engine, whistling posts, land marks and other warning signs, and it shall be unlawful, after such date for any such railroad to use a locomotive, except locomotives used exclusively in yard service, upon any part of its road lying within this state, that is not equipped with a headlight of such construction and candle power as will enable the engineer to see whistling posts, land marks and other warning signs at a distance of not less than three hundred fifty feet in advance of the engine: Provided, That not less than thirty per cent Proviso. of all the locomotives hereinbefore required to be provided with such headlights shall be so equipped on or before March one, nineteen hundred fourteen.

(696) SEC. 2. The state railroad commission shall from time to time inspect or cause to be inspected the headlights of all locomotives found in use on any railroad in this state. On discovering any defective headlight, the commission shall report the fact to the superintendent or other officer having charge of the road on which it is found, and the railroad corporation receiving such notice, shall thereupon cause such defective headlight to be immediately repaired, and if so ordered by the railroad commission shall put the locomotive containing such defective headlight out of service until repaired and put in good working order: Provided, That Inspection by commission. Proviso. should a headlight on any locomotive become defective when being used in transportation, it shall not be considered a violation of the provisions of this act to continue the operation of said locomotive to its destination.

(697) SEC. 3. Any railroad corporation using or permitting to be used on its line in this state, a locomotive in violation of any provision of this act, shall be liable to a penalty of one hundred dollars for each violation, to be recovered in a suit or suits to be brought by the prosecuting attorney in the circuit court of the county having such jurisdiction in the locality where such violation occurred. Upon duly verified information being given him of such violation, such prosecuting attorney shall bring such suits. The railroad commission shall give the proper prosecuting attorney such information of any such violations as may come to its knowledge. Penalty.

An Act for the supplying of individual drinking utensils in certain cases by persons, firms and corporations, maintaining drinking fountain, water cooler, tank or other device for public drinking purposes; the posting of placards in certain cases and providing a penalty for a violation of the provisions of this act.

[Act 93, P. A. 1913.]

The People of the State of Michigan enact:

Individual
drinking
utensils, who
to furnish.

(698) SECTION 1. Hereafter it shall be the duty of every person, firm or corporation, within this state, maintaining any public drinking fountain, water cooler or tank, or any other device dispensing water for public drinking purposes, other than a sanitary fountain, to provide for supplying individual drinking utensils by sale or free distribution; and if by sale, at a cost not exceeding one cent for each individual utensil. In case there shall be no facilities for furnishing as aforesaid individual drinking utensils at any such fountain, water cooler, tank or other device, the person, firm or corporation so maintaining the same shall post in close proximity thereto a placard designating the place at which or the person from whom such individual drinking utensils may be procured.

Penalty for
violation.

(699) SEC. 2. Any person, firm or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction be punished by a fine of not less than ten dollars nor more than twenty-five dollars, or by imprisonment in the county jail not to exceed thirty days, or by both such fine and imprisonment, in the discretion of the court.

TRANSPORTATION OF LIQUORS INTO "DRY" TERRITORY.

[Extract from P. A. 381 of 1913.]

Transporta-
tion com-
panies to keep
record of
shipments.

Statements
to be entered.

Consignee
to sign.

(700) SEC. 3. All railroad, express and transportation companies within this state, or doing business within the state, are hereby required to keep at each local office a separate book in which shall be entered immediately upon receipt thereof in territory within which the manufacture and sale of intoxicating liquors for beverage purposes are prohibited by any law, whether local or state-wide in its operation, truthful statements of the amount and kind of liquor received, the name and address of the consignor, the name and address of the consignee, the purpose for which said liquor is intended to be used, as stated upon the outside of the package containing such liquor; the date when received, the date when delivered and by whom and to whom delivered; after which record shall be a blank space in which the consignee by himself or herself or his or her agent shall be required to sign his or her true name before such liquors are delivered to such

consignee, which book shall be open to public inspection at any time during the business hours of said company. Such book shall constitute prima facie evidence as to the facts therein stated, and be admissible as evidence in any court in this state: Provided, That before any such liquors mentioned in section one of this act shall be delivered to any person it shall be necessary for the consignee to make and file with the railroad, express or transportation company at the office of such company in the city, village or township to which such liquor shall be consigned, an affidavit legally sworn to stating therein that he or she is of full legal age and legally entitled under the provisions of this act to have such liquors delivered to him or her, which affidavit shall be substantially in the following form:

State of Michigan, County of ss.
being first duly sworn,
 (date) (name)

deposes and says that he or she is more than twenty-one years of age, that he or she is not disqualified by the provisions of the general liquor laws of the state of Michigan, or by the provisions of act three hundred eighty-one of the public acts of nineteen hundred thirteen to receive any of the liquors mentioned in section one of act three hundred eighty-one, public acts nineteen hundred thirteen.

On this day of, 19.... before me personally appeared, the above named affiant to me known to be the person therein described who says that he or she has read the foregoing affidavit by him or her subscribed and that the same is true of his or her knowledge.

.....
 (Notary Public or Justice of the Peace.)

Provided, however, That it shall not be necessary for any such consignee to make and file any new or further affidavit as herein provided when there is on file with the railroad, express or transportation company such affidavit as herein provided: Provided further, That the statements contained in such affidavits may be accepted as true by said railroad, express or transportation company for what they show on their face, but shall not otherwise operate to relieve any person or corporation from liability for illegal delivery. Any express, railroad or other transportation company, or any employe or agent thereof who fails, neglects or refuses to comply with the provisions of this section, or who makes or causes to be made any false entry in said book, shall be deemed guilty of a misdemeanor, and punished by a fine of not more than five hundred dollars, or imprisoned in the county jail not more than six months, or both such fine and imprisonment in the discretion of the court.

An Act to require railroad companies to provide telephone connection with their offices, buildings and grounds, and to empower the Michigan railroad commission to regulate the same.

[Act 383, P. A. 1913.]

The People of the State of Michigan enact:

Telephone connections.

(701) SECTION 1. Every railroad company shall furnish reasonably adequate telephonic connection with its offices, buildings and grounds.

Inadequate service, etc.

(702) SEC. 2. Upon complaint to the Michigan railroad commission that any telephonic service with any railroad is inadequate or in any respect unreasonable or unjustly discriminatory, or that such service cannot be had, it shall be the duty of said commission to investigate the same, and if upon investigation the commission shall find that any telephonic service is inadequate or unreasonable or unjustly discriminatory, and that such service cannot be had, it shall determine and by order fix a reasonable regulation, practice or service to be installed, imposed, observed and followed in the future.

Investigation.

Action.

(703) SEC. 3. All orders made by the commission under the provisions of this act shall have the same force and effect, and an action may be commenced to vacate and set aside the same as, provided in act number three hundred of the public acts of nineteen hundred nine, for the review of the decisions of the said commission.

An Act to regulate the selling of steamship or railroad tickets or orders for transportation to and from foreign countries, and the receipt of deposits of money for the purpose of transmitting the same or equivalent thereof, to foreign countries.

[Act 271, P. A. 1915.]

The People of the State of Michigan enact:

Certificate from secretary of state.

(704) SECTION 1. No person, firm or corporation shall engage in selling steamship or railroad tickets for transportation to or from foreign countries, or in the business of receiving deposits of money for the purpose of transmitting the same, or the equivalent thereof, to foreign countries, until it has obtained from the secretary of state a certificate of compliance with the provisions of the two sections next following. The certificate shall be conspicuously displayed in the place of business of such person, firm or corporation.

(705) SEC. 2. Such person, firm or corporation shall Bond. make, execute and deliver a bond to the state of Michigan in the sum of one thousand dollars, conditioned for the faithful holding and transmission of any money, or the equivalent thereof, delivered to it for transmission to a foreign country, or conditioned for the selling of genuine and valid steamship or railroad tickets for transportation to or from foreign countries, or for both if to be engaged in both of such businesses.

(706) SEC. 3. The bond shall be executed by such person, How bond executed. firm or corporation as principal, with at least two good and sufficient sureties, who shall be responsible and owners of real estate within the state. The bond of a surety company Surety bond. may be received if approved by the secretary of state and filed in his office. Upon the relation of any party aggrieved, a suit to recover on such bond may be brought in a court of competent jurisdiction.

(707) SEC. 4. The secretary of state shall keep a book to Secretary of state to keep bond book. be known as a "bond book" wherein he shall place in alphabetical order all such bonds received by him, the date of receipt, the name or names of the principals and place or places of residence, and place or places for transacting their business, the names of the surety upon the bond, and the name of the officer before whom the bond was executed or acknowledged. Such record shall be open to public inspection. The secretary of state shall collect a fee of one dollar Fee. for each bond so filed.

(708) SEC. 5. A person, firm or corporation which en- Penalty. gages in such business, contrary to the provisions of the second and third preceding sections, shall upon conviction thereof be fined not more than five hundred dollars or imprisoned not more than six months, or both.

(709) SEC. 6. Nothing herein shall apply to tickets, Act not to apply. drafts, money orders or travelers checks issued by any railway company or trans-Atlantic steamship companies or their duly authorized agents or to national banks, express companies, state banks or trust companies.

(710) SEC. 7. Provided, That the provisions of this act Proviso, act not to apply to American continent. shall not apply to tickets sold or money transmitted to any country on the American continent.

CHAPTER IX.—MISCELLANEOUS PROVISIONS OF LAW AFFECTING RAILROAD COMPANIES.

[Extract from Act 283, P. A. 1909.]

CHAPTER I.

Railroad
crossings.

Application to
railroad com-
mission.

Examination
and hearing.

Grant of per-
mission
to cross.

If extra
hazardous,
state commis-
sioner to join.

May cause
re-location.

Separation of
grades.

Proviso, plans
for crossing.

(711) SECTION 27. Before laying out any highway under the provisions of this act where the same crosses the track and right of way of any railroad company, steam or electric, application shall be made to the Michigan railroad commission for permission to make such crossing and thereupon it shall be the duty of said commission to make such examination of the location of such proposed crossing as it may deem necessary. At such examination the railroad company and the township, good roads district or county interested shall be entitled to be heard after the service of proper notice upon them by the Michigan railroad commission. If the location of the proposed crossing is found, upon said examination and hearing, to be feasible and reasonably safe for a crossing at grade, it shall be the duty of said commission to grant permission for such crossing to the highway officials making such application and issue specifications for same which shall include approaches, cattle guards, fences and such other safeguards as in their judgment will make said proposed crossing reasonably safe, but if, on examination and hearing, the Michigan railroad commission shall deem the proposed location for the said crossing extra hazardous, then the said commission shall notify the state highway commissioner and the said railroad commission and state highway commissioner acting jointly, shall examine the site of the proposed crossing, in company with the parties in interest, and shall have power, if in their judgment it is necessary, to cause a re-location of the proposed highway and crossing on a line which will provide a reasonably safe point for such crossing as a condition of approval of said application. However, if said Michigan railroad commission and state highway commissioner jointly, after examination, determine that it is impracticable to secure a reasonably safe crossing at grade by re-locating the same, they may order a separation of the grades, the same to be constructed according to plans which shall be submitted to the said railroad commission and state highway commissioner for their joint consideration and approval: Provided, That should such plans not meet with the approval of the railroad commission and state highway commissioner, such changes as they shall jointly deem advisable shall be made before the construction of said crossing is commenced. If the said railroad commission and state highway commissioner jointly determine that it is im-

practicable to secure a reasonably safe crossing by any of these methods, then the said railroad commission and state highway commissioner jointly may refuse to allow such crossing. If permission be granted for such crossing, either at grade or otherwise, the same proceedings in relation to acquiring the rights of way for such highway across the land of said railroad company including the right of way across the tracks shall be had as in other cases. Service of all papers shall be made in the same manner upon such railroad companies as is provided by law for service of summons on railroad companies. Such railroad companies shall be entitled to receive the actual value of the use of the land taken for such highway and when the compensation awarded such railroad company for such damages as above provided shall have been paid or tendered to any person in charge of the ticket or freight office of such company entitled thereto and situated nearest the said highway crossing pursuant to the provisions of section twenty-four of this chapter, then and in such case such right of way shall be deemed to be fully acquired and secured for the public. The highway officials shall then notify in writing such railroad company to furnish a competent superintendent or track man to superintend the construction of such crossing which shall be according to the plans and specifications approved by the Michigan railroad commission when such crossing is at grade and the Michigan railroad commission and state highway commissioner when such crossing is other than at grade and such township, good roads district or county shall pay to such railroad company a per diem compensation for such superintendent, the compensation to be determined by the Michigan railroad commission for a crossing at grade or the Michigan railroad commission and the state highway commissioner jointly, not exceeding three dollars per day, for a crossing other than at grade, for the time actually and necessarily spent in superintending such construction, and such highway officials are authorized to issue orders for the payment of such superintendent. In case such railroad company refuses or neglects to furnish a superintendent for the construction of such crossing as aforesaid, then and in such case it shall be the duty of the railroad commission, if such crossing be at grade, or the Michigan railroad commission and the state highway commissioner jointly, if such crossing be other than at grade to appoint some suitable person, who shall receive the compensation aforesaid from the said township, good roads district or county, to oversee and superintend the construction of such crossing. If any railroad company shall attempt to obstruct the opening of any such highway after such right of way has been secured and payment for damages herein provided for has been made and tendered as herein provided, by any agent, officer or employe or other person, the said

Refusal of permission to cross.

Rights of way.

Service of papers.

Compensation.

To whom tendered.

Securing right of way.

Superintendence of construction.

Compensation of superintendent.

Refusal to furnish superintendent.

Obstruction by railroad company.

Penalty.	railroad company shall be liable to a penalty of twenty-five dollars for each day the opening or construction of such highway is impeded, for the benefit of the township, good roads district or county, and such township, good roads district or
Recovery of penalty.	county may sue for and recover such penalty in the circuit court for the county in which such crossing is located, in the name of the township, good roads district or county; and in addition thereto, if any officer, agent or employe, or person acting for and in the interest of any railroad company shall
Annoyance or hindrance.	annoy, hinder or obstruct any highway official, contractor or person employed by him or them in opening such highway or constructing the same according to the specifications issued by the Michigan railroad commission or the Michigan railroad commission and the state highway commissioner jointly, then such officer, agent, employe or person shall be guilty of
Penalty.	a misdemeanor and upon conviction thereof shall be fined not to exceed one hundred dollars, or imprisoned in the county jail not to exceed ninety days, or both such fine and imprisonment in the discretion of the court. All material
Material and labor.	and labor used in the construction of such crossing shall be furnished by the township good roads district or county applying for such crossing. No public highway shall hereafter
Permission to cross required.	be constructed across the track of any railroad corporation nor shall the tracks of any railroad corporation be constructed across a public highway without having first secured the
Proviso, grade crossing, other crossings.	permission of the Michigan railroad commission: Provided, That such crossing is proposed to be at grade. If other than at grade, permission shall be granted jointly for such crossing by the Michigan railroad commission and the state highway commissioner. The said railroad commission when acting alone, or the railroad commission and state highway commissioner when acting jointly, shall have the right to refuse permission or to grant it upon such terms and conditions as they may deem necessary for the preservation of
Powers of commission and commissioner.	public safety. The Michigan railroad commission and the state highway commissioner jointly shall have power, when in their judgment they deem it necessary for the safety of the public, to change the location of or abolish any existing crossing of railroads with highways and to require, when in their judgment it would be practicable, a separation of grades at any such crossing and to prescribe the manner of construction and the terms upon which such separation shall be made and the proportion in which the expense of the alteration or abolition of such crossings or the separation of such grades shall be divided between the railroad corporation and the state, county, good roads district or township: Provided, That no disposition shall be made of this matter until after all parties in interest shall have been afforded an opportunity to be heard in relation thereto. The state's portion of the cost of such changes as may be ordered by the provisions of
Proviso, hearing.	
State's share of expense.	

this act shall in no case exceed twenty-five per cent of the total cost of such improvement and shall be paid from any state highway funds not otherwise appropriated, upon the certificate of the state highway commissioner to the auditor general: How paid. Provided further, That nothing in this section shall be so construed as vesting the state highway commissioner with authority in grade separation matters when proceedings are taken under and by virtue of act number ninety-two of the public acts of eighteen hundred ninety-three, as amended. Further proviso, construction of section.

Am. 1915, Act 175.

Maltby v. C. & W. M. Ry. Co., 52/108; Grand Rapids v. Bennett, 106/528; Railway Co. v. Tiffany, 99/471.

The law of 1881 requiring the railroad company to construct and maintain highway crossings was adversely construed in *People v. L. S. & M. S. Ry. Co.*, 52/277; this law was amended in 1883, requiring the same proceedings in obtaining the right of way as in other cases and allowing such companies just compensation for the land taken, but requiring such company, at its own expense, to open, construct and maintain such highway. This requirement was also unconstitutional in *C. & G. T. Ry. Co. v. Hough*, 61/507, as being in conflict with the provisions forbidding the taking of private property without just compensation. See also *Grand Rapids v. G. R. & I. R. R. Co.*, 58/642, where it was held that the damages includes the expense entailed by the crossing, and may involve outlays for making it safe. Where a new highway is opened across a railroad, the township and not the railroad company, is charged with the duty of keeping in safe condition for public travel that portion of the highway lying within the railroad right of way, but not being a part of the crossing itself nor of the approaches thereto.—*Gage v. Twp. of Pittsfield*, 120/437. See also *Wetherbee v. Mich. Cen. R. Co.*, 122/1. Indemnification for expense of gateman at crossing, in a proceeding to open a new street across track.—*Detroit v. Railway Co.*, 112/304.

NOTE.—It was affirmed in *People v. L. S. & M. S. Ry. Co.*, 52/278, that "the right of property to governmental protection does not depend upon whether its owner is a natural or artificial person;" this right seems to be recognized in the existing law in making the municipality laying out the road liable for all damages incurred thereby.—[Compiler.]

An Act to provide for the construction and maintenance of drains, and the assessment and collection of taxes therefor, and to repeal all other laws relative thereto.

[Extract from Chapter III, Act 254, P. A. 1897.]

(712) § 4333. SEC. 15. Drains may be laid along the line of any railroad within its right of way: Drains may be laid within the right of way. Provided, Such drain shall not be to the injury of the road bed. Whenever it is proposed to construct a drain along the line, and within the right of way of any railroad, and the company owning or operating such road shall refuse or neglect to permit such drain to be constructed, or release the right of way therefor within the time prescribed in section four of chapter three, such release shall be obtained in the same manner as is provided in this act for obtaining private lands: Release of right of way. Provided, That no drain shall be constructed along the line of any railroad without the consent of the company owning or operating such road, if it shall appear to the special commissioners or jury that such drain can equally well be laid on private lands. Proviso.

(713) § 4334. SEC. 16. Whenever it is necessary to lay out and establish, deepen or widen, or both, or extend or straighten a drain across the right of way or road bed of any railroad or railway or telephone or telegraph company, the same proceedings shall be had throughout in all respects as in cases provided in this act for obtaining private lands, except as herein provided. The damages and compensation to be awarded by the special commissioners or jury shall include the legal damages for the making of the opening required in the drain proceedings. After damages as aforesaid shall have been determined, it shall be the duty of the railroad or railway company or the telephone or telegraph company, when notified by the county drain commissioner so to do, to make and maintain the necessary opening through its road bed and to build and maintain a suitable culvert. Notice in writing to make such opening and to construct such culvert shall be served upon such company by leaving a copy thereof with the ticket or freight agent or general officer of such railroad or railway, telephone or telegraph company, at least thirty days before such railroad or railway, telephone or telegraph company shall become liable. In case such railroad or railway company, telephone or telegraph company shall neglect for thirty days after service of such notice as aforesaid, the county drain commissioner shall have the right to petition the circuit court, in addition to any other remedies which may exist, of the county in which such crossing is located, to compel such company to make such opening forthwith; and such circuit court shall, if it find there is legal right to such opening, order the same to be forthwith constructed by said company, and issue its writ of mandamus therefor. At least ten days' notice shall be given such company of such application, and thereafter such proceedings shall follow the practice of circuit courts in mandamus proceedings. Said matter shall be heard and determined as speedily as practicable, and take precedence over all other cases which may be pending in such court. Such costs may be awarded the prevailing party as are awarded in other motions for mandamus.

Am. 1909, Act 320.

Chicago, etc., R. R. Co. v. Chappell, 124 / 72; P. M. R. Co. v. Weilnau, 157 / 702.

Penalty for refusing to make opening, etc.

Prosecuting attorney to collect.

(714) § 4335. SEC. 17. In case such railroad company shall refuse or neglect to comply with the provisions of the preceding section, it shall be liable to a penalty of ten dollars for each day's refusal or neglect to make such opening and construct such culvert. The prosecuting attorney of the county in which such railroad company shall have refused or neglected to comply with the provisions of the preceding section shall, upon complaint being made by the county drain commissioner, bring suit to collect such penalty or fines, and it shall be his duty to prosecute the same to a final determination in any court having competent jurisdiction.

An Act for the organization of telephone and messenger service companies.

[Extract from Act 129, P. A. 1883.]

(715) § 6691. SEC. 4. Every such corporation shall have power to construct and maintain lines of wire or other material, for use in the transmission of telephonic messages along, over, across, or under any public places, streets and highways, and across or under any of the waters in this state, with all necessary erections and fixtures therefor: May construct and maintain telephone lines. Provided, Proviso. That the same shall not injuriously interfere with other public uses of the said places, streets and highways, or injure any trees located along the line of such streets or highways, nor shall the same interfere with the navigation of said waters, or the running of railway trains; to construct, provide and furnish instruments, devices, and facilities for use in the transmission of such messages, and to construct, maintain and operate telephone exchanges and stations, and generally to conduct and carry on the business of providing and supervising communication by telephone, and also the business of furnishing messenger service in cities and towns: Further proviso, how may acquire right of way in U. P. Provided further, That whenever any corporation organized under the provisions of this act for the purpose of constructing any public telephone line in the upper peninsula of this state finds it impracticable to construct its said lines upon any of the public places, streets and highways and across or under any waters in this state, on account of which it may desire to acquire any right of way for its said lines over, through, under and across any lands needed therefor, and is unable to agree with the owner of such lands for the purchase of said right of way, such corporation shall have the right to acquire the title to said right of way, outside of the corporate limits of cities and villages, upon making just compensation to the owner of such lands, in the same manner and by the same proceedings as provided for in chapter one hundred and sixty-four of the compiled laws of eighteen hundred and ninety-seven of this state for the condemnation of lands for right of way by railway companies: Further proviso. Provided further, That whenever the owner of any lands which are not traversed by any railway objects to having any telephone company run its line of right of way across his lands at any point then the said telephone company shall confine its line of right of way to established subdivision lines. Whenever the owner of any lands which are traversed by any railway shall object to having any telephone company run its line of right of way across his lands at any point then the said telephone company shall confine its line of right of way to established subdivision lines or immediately adjoining and along the right of way of said railway. And it shall be lawful for any such corporation to purchase and hold a portion of the stock of any cor-

poration owning or controlling by patent, or otherwise, the use of any instrument or device necessary or convenient for use, in the transmission or reception of telephonic messages, and to purchase and hold all real property necessary to carry out the purposes of its organization.

Am. 1899, Act 16.

Kibbie Telephone Co. v. Landphere, 151 / 309.

Shade trees in the highway adjacent to a farm belong to the owner of the land and may not be destroyed or injuriously trimmed by a telephone company in violation of this and other statutes.—Bolender v. Southern Mich. Telephone Co., 182 / 646.

Telephone
lines, where
constructed.

(716) SEC. 9. Whenever any corporation organized under the provisions of this act shall desire to construct a line of public telephones in the lower peninsula of this state, the same shall in all cases, when not located upon the public places, streets and highways of the said lower peninsula, or within the corporate limits of cities and villages, be located along side of and adjacent to the railway right of way in cases where the railway right of way lies adjacent to the lands sought to be acquired.

Added 1899, Act 93.

Right of way,
how may
acquire.

(717) SEC. 10. Whenever any such corporation shall desire to acquire a right of way over, through, under or across any lands which may be adjacent to the right of way of any railway, and is unable to agree with the owner or owners of such lands for the purchase of said right of way, such corporation shall have the right to acquire the title to said right of way, outside the corporate limits of cities and villages, in the same manner and by the same proceedings as are provided for in chapter one hundred and sixty-four of the compiled laws of eighteen hundred and ninety-seven of this state, providing for the condemnation of lands for right of way by railway companies: Provided, That the owner or owners of the lands over which any such right of way shall be acquired shall have the right to occupy and use the same, but such occupancy and use shall not be to the injury of the property of such corporation situate upon such right of way: Provided, The strip of land so condemned shall not exceed six feet in width.

Proviso.

Proviso.

Added Id.

An Act to regulate the transmission of electricity through the public highways, streets and places of this state where the source of supply and place of use are in the same or different counties; and to regulate the charges to be made for electricity so transmitted; and to vest the Michigan railroad commission with certain powers and duties in regard thereto.

[Act 106, P. A. 1909.]

The People of the State of Michigan enact:

(718) SECTION 1. When electricity is generated or developed by steam, water or other power within one county of this state, and transmitted and delivered to the consumer in the same or some other county, then the transmission and distribution of same in or on the public highways, streets and places, and the rate of charge to be made to the consumer for the electricity so transmitted and distributed shall be subject to the regulation as in this act provided.

Control of transmission of electricity.

A party receiving electricity for power purposes and then transforming it and using it for lighting purposes, for which a higher rate was charged was enjoined from so doing, since his action operated as a discrimination against other consumers of electricity for lighting purposes.—*Alpena Electric Light Co. v. Kline*, 180 / 279.

(719) SEC. 2. The Michigan railroad commission, herein-after referred to as "the commission," shall have control and supervision of the business of transmitting and supplying electricity as mentioned in the first section of this act.

Michigan railroad commission.

(720) SEC. 3. Any person, firm or corporation engaged or organized to engage in any such business of transmitting and supplying electricity in one or more counties of this state, shall, with the consent of the duly constituted city, village and township authorities of the cities, villages and townships in or through which it operates or may hereafter propose to operate, have the right to use the highways, streets, alleys and other public places of such cities, villages and townships: Provided, That in all cases each transmission line used shall have insulation and conductivity in accordance with its voltage. In case it has or procures a franchise from any city, village or township, it may transact a local business therein. Nothing herein contained shall be construed to impair any right possessed by any village or township to the reasonable control of their streets, alleys and public places in all matters of more local concern.

Right to use of highways.

Proviso, insulation.

Local business.

Impairment of rights.

(721) SEC. 4. Before any person, firm or corporation shall erect any lines for the transmission of electricity in or through the highways, streets or public places of one or more counties of this state, such corporation shall file with the commission a map drawn to such scale as the commission may require, showing the route or routes it proposes to traverse with its lines, the height from the ground, which at highway crossings shall not be less than thirty feet, and at

Map, where filed, what to show.

Consent, certified copies of.	railroad crossings shall be in accordance with the regulations of the commission made under authority of law; and such other information as the commission may reasonably require, together with certified copies of each consent of such cities, villages and townships as it has procured applicable to such proposed line; and a certified copy of any and all franchises under which it proposes to transact local business in the several municipalities. Whenever any such person, firm or corporation proposes to extend its line, a similar map and copies of such consent and franchise as it has secured applicable to such proposed extension shall be filed.
Franchises.	
Proposed extensions.	
Power and duty of commission.	(722) SEC. 5. The commission shall have power to inspect and examine all such electrical apparatus already installed in any public highways, streets or places, and all such apparatus hereafter installed, and to investigate from time to time the method employed by persons, firms or corporations transmitting and supplying electricity, and shall have power to order such improvements in such method as it shall be necessary to secure good service and the safety of the public and of those employed in the business of transmitting and distributing such electricity, and of any persons liable to be injured by the erection, maintenance and use of such apparatus.
Idem.	(723) SEC. 6. The commission shall have power in its discretion to order electric current for distribution to be delivered at a suitable primary voltage, to any city, village or township through which a transmission line or lines may pass; prescribe uniform methods of keeping accounts to be observed by all corporations engaged in such business of transmitting and supplying electricity, and to keep informed as to the methods employed by them in the transaction of their business; and to see that their property is maintained and operated for the security and accommodation of the public and in compliance with the provisions of law. It shall have power to require of such persons, firms or corporations annually a verified report upon such form and giving such information as will enable the commission to better discharge the duties imposed upon it hereby.
Annual report.	
Complaints, investigation of.	(724) SEC. 7. Upon complaint in writing by any city, village or township, by its duly constituted common or village council or township board, or other duly constituted authority of such city, village or township, relative to the price of the electricity sold and delivered in such municipality, the commission shall investigate such complaint and may by its agents, examiners and inspectors, inspect the system and method used in transmitting and supplying electricity, and examine or cause to be examined the books and papers of such person, firm or corporation pertaining thereto. The commission shall cause notices of such complaint with a copy thereof to be served on the corporation affected thereby who
Notice of hearing.	

shall have a right to be heard in respect to the matter complained of at a convenient time and place to be fixed in such notice. After such investigation and hearing, the commission within lawful limits may by order fix the maximum price of electricity to be charged by such corporation, and the price so fixed, of which such corporation shall have notice, shall be the maximum price in such municipality until the commission shall upon like complaint or upon the complaint of the person, firm or corporation engaged in furnishing such electricity, again fix the maximum price to be charged therefor. In determining such maximum price, the commission shall consider and give due weight to all lawful elements proper to be considered to enable it to determine the just and reasonable price to be fixed for supplying electricity in such municipality, including cost, reasonable return on actual value of all property used in the service, depreciation, obsolescence, risks of business, value of service to the consumer, the connected load, the hours of the day when used and the quantity used each month: Provided, however, That the commission shall in no case have power to change or alter the price for electricity fixed in or regulated by or under any franchise heretofore or hereafter granted by any city, village or township: Provided further, That the maximum rate so fixed shall not limit the right of such person, firm or corporation to supply electricity for a less rate if it charges all customers at the same rate for electricity simultaneously used under like conditions. No corporation or person engaged in the business of supplying electricity shall be entitled to have, receive, or recover a greater charge for electricity supplied to any consumer than that fixed by the commission after the same has been fixed as provided herein. The provisions of the act governing hearings before said commission as to rates for transportation of freight by railroads shall so far as applicable govern the hearings before said commission herein provided for.

Order fixing maximum price.

Elements considered in determination.

Proviso, price fixed under franchise.

Further proviso, less rate.

Act governing hearings.

Compliance with orders.

Penalty.

Separate offenses.

Action of recovery.

(725) SEC. 8. Every corporation, its officers, agents and employes, and all persons and firms engaged in the business of furnishing electricity as aforesaid shall obey and comply with every lawful order made by the commission under the authority of this act so long as the same shall remain in force. Any corporation or person engaged in such business, or officer, agent, or employe thereof, who wilfully or knowingly fails or neglects to obey or comply with such order or any provision of this act shall forfeit to the state of Michigan not to exceed the sum of three hundred dollars for each offense. Every distinct violation of any such order or of this act, shall be a separate offense, and in case of a continued violation each day shall be deemed a separate offense. An action to recover such forfeiture may be brought in any court of competent jurisdiction in this state in the name of the

people of the state of Michigan, and all moneys recovered for any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general fund.

Act not to
apply to
telegraph,
etc.

(726) SEC. 9. This act shall not apply to the transmission or use of electricity for the purpose of conveying intelligence by telegraph, telephone or other methods now or hereafter adopted therefor.

An Act to prescribe the qualifications of telegraph operators, railroad conductors, engineers and flagmen employed on the railroads of this state, and to provide penalties for the violation hereof.

[Act 187, P. A. 1911.]

The People of the State of Michigan enact:

Affidavit as
to experience,
etc.

(727) SECTION 1. Every person hereafter employed upon any steam railroad in this state in the capacity of locomotive engineer, conductor or flagman shall file in the office of the Michigan railroad commission an affidavit, in such form as the commission may prescribe, setting forth the length of railroad experience of the person making the same, and for what company or companies and in what capacity performed.

Engineers,
prior
experience.

(728) SEC. 2. No person shall run or operate any locomotive or other motor power upon any railroad in the state of Michigan without first having served three years as fireman prior to qualifying for freight service and two years as a freight engineer before qualifying for passenger service.

Conductors,
who may act.

(729) SEC. 3. No person shall act or engage to act as a conductor on a railroad freight train in this state without having for two years prior thereto served or worked in the capacity of a brakeman or conductor on a freight or passenger train on a line of road; nor shall any person act or engage to act as a conductor on a passenger train in this state without having for one year prior thereto served or worked in the capacity of a conductor of a freight or passenger train on a line of road.

Telegraph
operators.

(730) SEC. 4. It shall be unlawful for any common carrier by railroad, carrying freight or passengers between points in this state, to employ any telegraph operator who has not had at least thirty days' experience in the handling of train orders under the tutorship of an experienced telegraph operator and shall have attained the age of nineteen years.

Flagmen.

(731) SEC. 5. No person shall act or engage to act as a flagman on a railroad train in this state without having for three months prior thereto served or worked as a brakeman on a freight train or passenger train on a line of road.

(732) SEC. 6. No railroad company by its officers, agents or employes shall knowingly engage or employ any person to act in the capacity of locomotive engineer, conductor or flagman in violation of the provisions of this act. Not to engage.

(733) SEC. 7. Nothing in this act shall be construed as applying to the running or operating of engines in taking said engines to or from trains at division terminals by engine hostlers, or of the shifting of cars or making up trains or doing any work appurtenant thereto, or engine houses, trams or freight yards by switchmen or yardmen, or in the case of the disability of an engineer or a conductor or a flagman while out on the road between division terminals, or in case of relief or wrecking trains, in case of accident or wreck. Exceptions.

(734) SEC. 8. The provisions of this act shall not apply to any railroad company within this state nor the receiver or lessee thereof, whose line of railway is less than thirty miles in length, nor shall anything herein contained relieve any railroad company from the negligence of any of its employes. In case any railroad company is unable to hire a sufficient number of men having the experience for the respective positions specified in this act, at the average rate of wages paid by said company during the next preceding year, it shall be deemed a substantial compliance with this act if such company shall employ from among such men as are available those having the highest qualifications as to experience and efficiency. Negligence, liability for, etc.
Compliance with act, what deemed.

(735) SEC. 9. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than one hundred dollars or confined in the county jail not exceeding ninety days, or by both such fine and imprisonment in the discretion of the court. Penalty.

An Act to declare telephone lines and telephone companies within the state of Michigan to be common carriers, to regulate the business of the same, provide for the consolidation thereof and prescribe a penalty for the violation of this act.

[Act 206, P. A. 1913.]

The People of the State of Michigan enact:

(736) SECTION 1. All persons, corporations and associations operating telephone lines or exchanges doing a telephone business within the state of Michigan, are hereby declared to be common carriers; and all laws so far as applicable now in force or that may be hereafter enacted, regulating the transportation of persons or property by railroad Common carriers.

companies within the state, shall apply with equal force and effect to telephone companies.

Railroad
commission to
control, etc.

(737) SEC. 2. The Michigan railroad commission, hereinafter styled "the commission," shall have the general control of all telephones, telephone lines and telephone companies within the state, and shall investigate any alleged neglect or violation of the laws of the state by any person, copartnership or corporation doing a telephone business within the state, or by the officers, agents or employes thereof.

Service, etc.,
charges.

(738) SEC. 3. All persons, copartnerships or corporations doing a telephone business within this state are required to furnish reasonably adequate service and facilities for the use of their lines by the public. All charges made for any service rendered, furnished or performed, or to be rendered, furnished or performed within the state by any telephone company shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful; and the commission shall have power to make, alter, amend or abolish any rate or charge for any service, and may regulate by rules or orders any service or facility; and it shall likewise prescribe the standard of construction and equipment that shall be maintained by any person, copartnership or corporation maintaining a physical connection between the lines and facilities of any such person, copartnership or corporation, and the lines and facilities of any other person, copartnership or corporation.

Rates, com-
mission may
make, etc.

Unjust dis-
crimination
unlawful.

(739) SEC. 4. If any telephone company doing business within this state shall directly or indirectly by any special rate, rebate, drawback or other device, charge, demand, collect or receive from any person or persons, copartnership or corporation a greater or less compensation for any service rendered, furnished or performed than it charges, demands, collects or receives from any other person or persons, copartnership or corporation for rendering, furnishing or performing for him or them a like contemporaneous service, such telephone company shall be guilty of unjust discrimination which is hereby prohibited and declared to be unlawful. It shall further be unlawful for any person, copartnership or corporation directly or indirectly to ask, demand or accept any rebate, drawback or other device whereby he shall obtain telephone service for any less rate than that charged others in like circumstances.

Rebating
unlawful.

Preference
unlawful.

(740) SEC. 5. It shall be unlawful for any telephone corporation doing business within this state to make or give any preference or advantage to any person, copartnership, corporation or locality, or subject any person, copartnership, corporation or locality to any prejudice or disadvantage in any respect whatever.

(741) SEC. 6. Whenever the commission, after a hearing had on its own motion or upon complaint of any party in interest, shall find that a physical connection can reasonably be made between the lines of two or more persons, copartnerships or corporations operating telephone lines, whose lines by such connection can be made to form a continuous line of communication, and that public convenience and necessity will be subserved thereby, or shall upon like motion or complaint find that two or more persons, copartnerships or corporations so operating telephone lines have failed to establish joint rates, tolls or charges for service by or over their said lines, the commission may by its order require that such physical connection be made, and may prescribe through lines and joint rates, tolls and charges to be made and to be used and observed in the future. If such persons, copartnerships or corporations so operating telephone lines and telephone facilities do not agree upon the division between them of the cost of installing of such physical connection or connections, or the division of any joint rate, tolls or charges established by the commission over such through line, the commission shall have authority, after hearing to establish such division.

Physical connections, may order.

(742) SEC. 7. All persons, copartnerships or corporations required by an order of the commission to provide for the physical connection of telephone lines and facilities, and to establish joint rates, tolls and charges, are hereby required to perform switching service for the transmission of messages between the lines and facilities operated by such persons, copartnerships or corporations without favor or discrimination. The person, copartnership or corporation on whose line or lines messages originate shall be responsible to and make settlement with the person, copartnership or corporation owning or operating the terminal line or lines for the share of said person, copartnership or corporation in the joint toll rate or charge for such message.

Switching service.

(743) SEC. 8. In case any telephone company shall desire to sell or lease its lines or facilities, or any part thereof, to any other telephone company in this state, such sale or lease shall be lawful only upon compliance with the following conditions, that is to say: The company or companies desiring to sell or lease any telephone line, lines or facilities, shall join with the company or companies desiring to purchase or lease the same in an application to the commission, setting forth a general description of the property, together with the price and conditions under which it is proposed that the same shall be taken. Upon the receipt of such application the commission shall fix a date of hearing, which shall be not less than ten days from the date of the filing of such application. If upon the hearing of such application it shall be made to appear to the commission that such sale, lease,

Sale, conditions governing.

Hearing.

merger or consolidation is in furtherance of public convenience and necessity, and that the property to be sold or leased is of at least the value at which it is to be taken, the commission shall by its order authorize such sale, lease, merger or consolidation, and by its order determine the terms and conditions upon which such sale, lease, merger or consolidation may be made, and the connections, joint rates, tolls and charges that shall be accorded by the purchasers or leasers of such property to any and all persons, copartnerships and corporations, owning or operating telephone lines and facilities over and through the lines and facilities of said consolidated property; all of which terms and conditions shall be binding upon the purchasers or leasers of said property until the further order of the commission.

Certificate
of public
convenience,
application.

(744) SEC. 9. Any person, copartnership or corporation desiring to obtain a franchise to construct a telephone system in any municipality in the state of Michigan, shall apply to the commission for a certificate of public convenience and necessity, and the commission may grant or withhold said certificate after a public hearing and investigation upon the merits of the application in the manner provided herein for holding of public hearings and investigations on complaint, and no such person, copartnership or corporation shall be granted a franchise in any municipality in the state of Michigan to construct a telephone system until they have received a certificate of public convenience and necessity herein provided for. Every application under this section shall be in substantial compliance with a form to be furnished by the commission; it shall be accompanied by a map or plat showing the proposed line or lines which it is desired to construct and the line or lines of any person, copartnership or corporation serving the same territory. Such application shall likewise be accompanied by a schedule of the rates, tolls, rents and charges which it is proposed to charge for service in the event of the construction of said line or lines. In the granting of any certificate of public convenience and necessity under the provisions of this section, the commission shall fix the rates, tolls, rentals and charges to be imposed in the event of the construction of such telephone line or lines, which shall continue to be the lawful rates, tolls, rentals and charges of such person, copartnership or corporation until changed under and by virtue of the provisions of this act.

Map, etc.

Schedule of
rates, etc.

Increase of
rates, etc.,
when made.

(745) SEC. 10. No person, copartnership or corporation, owning telephone lines and facilities and rendering telephone service within this state shall increase any rate, toll, rental or charge, or so alter any classification, contract, practice, rule or regulation as to result in any increase in any rate, toll, rental or charge under any circumstance whatsoever, except upon an application to the commission, and a finding

by the commission that such increase is justified. Every such application shall be accompanied by a notice and proof of publication thereof for at least one insertion in some newspaper of general circulation in the territory served by the line or lines of such applicant, which said notice shall state the increase of rate, toll, rental or charge proposed, and the date when the application will be presented to the commission for the fixing of a date of hearing thereon. Upon receipt of any such application, the commission shall fix a date of hearing, which shall be not more than twenty days from the receipt of such application.

Notice, proof
of publication.

What to state.

(746) SEC. 11. The commission shall, acting upon its own motion and likewise upon the complaint of any person, copartnership, association, corporation, body politic or municipal corporation, have authority to hear and determine all complaints against the practices, rates, tolls, rentals or charges, or services rendered, or facilities furnished, or complaints as to service withheld or refused to be rendered, furnished or performed by persons, copartnerships or corporations within the terms of this act.

Complaints,
hearing, etc.

(747) SEC. 12. Upon the filing of any complaint against any practice, rate, charge or service rendered or facility furnished, or against any service withheld or refused to be rendered, furnished or performed under and by virtue of the provisions of the preceding section, the commission shall give the person, copartnership or corporation against which complaint is made, at least twenty days' notice of the time and place when and where a hearing will be given said person, copartnership or corporation upon the matters in such complaint alleged. The commission shall have power to administer oaths, certify to all official acts and to compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony as in cases arising under act number three hundred of the public acts of nineteen hundred nine.

Notice of
hearing.

(748) SEC. 13. The commission shall have the power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings of telephone companies and other companies before it in the establishment of rates, facilities, charges, service and other acts required of it under this act, which rules shall as near as may be, conform to the practice heretofore established under act number three hundred of the public acts of nineteen hundred nine.

May adopt
rules, etc.

(749) SEC. 14. Any telephone company or other party in interest, being dissatisfied with any final order of the commission made in any proceeding under this act, may within thirty days from the issuance of such order and notice thereof, commence an action in the circuit court in chancery against the commission as defendant to vacate and set aside

Action to set
aside order.

Answer.

any such order on the ground that the certificate granted or withheld is not in accordance with the rights of the parties, that the rate or rates, charges, joint rate or rates fixed are unlawful or unreasonable, or that any such regulation, practice or service fixed in such order is unreasonable; in which suit the commission shall be served with a subpoena and a copy of the complaint. The commission shall file its answer and on leave of court any interested party may file an answer to said complaint. Upon the filing of the answer of the commission said cause shall be at issue and stand ready for hearing upon ten days' notice by either party. All suits brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the circuit court shall always be deemed open for the hearing thereof, and the same shall proceed, be tried and determined as other chancery suits. Any party to such suit may introduce original evidence in addition to the transcript of evidence offered to said commission, and the circuit courts in chancery are hereby given jurisdiction of such suits and empowered to affirm, vacate or set aside the order of the commission in whole or in part, and to make such other order or decree as the courts shall decide to be in accordance with the facts and the law.

When injunction shall issue.

(750) SEC. 15. No injunction shall issue suspending or staying any order of the commission, except upon application to the circuit court in chancery or to the judge thereof, notice to the commission having been given and hearing having been had thereon.

Stay of proceedings.

(751) SEC. 16. If upon the trial of said action evidence shall be introduced by the complainant which is found by the court to be different from that offered upon the hearing before the commission or additional thereto, the court before proceeding to render judgment, unless the parties in such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for fifteen days from the date of such transmission. Upon receipt of such evidence the commission shall consider the same, and may alter, modify, amend or rescind its order relating to such rate or rates, charges, joint rate or rates, regulations, practice or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence. If the commission shall rescind its order complained of the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

Order, when rescinded, etc.

(752) SEC. 17. Either party to said action, within sixty Appeal. days after service of a copy of the order or judgment of the court, may appeal to the supreme court, which appeal shall be governed by the statutes and rules of court governing chancery appeals. When the appeal is taken the case shall, on the return of the papers to the supreme court, be immediately placed on the calendar of the then pending term, and shall be brought to a hearing in the same manner as other cases on the calendar, or if no term is then pending shall take precedence of cases of a different nature, except criminal cases, at the next term of the supreme court.

(753) SEC. 18. In all actions under this section the bur- Burden of proof. den of proof shall be upon the complainant to show by clear and satisfactory evidence that the order of the commission complained of is unlawful or unreasonable, as the case may be.

(754) SEC. 19. Each person, copartnership or corpora- Annual statement, what to contain. tion within this state, operating telephone lines and facilities, is hereby required to make on or before the first day of December of each year, upon blanks to be furnished by the commission, a statement of the income of such person, copartnership or corporation, and the expenses for the preceding fiscal year, amount of stock and other securities issued, investment in exchanges, toll lines, real estate used in connection with such telephone business, and such other information as the commission may require, said statement to be verified by the oath of some person knowing the facts stated therein.

(755) SEC. 20. The commission shall have the power and Records, etc., how kept. authority and it is hereby made its duty to prescribe the manner and the form of accounts, records and memoranda and the keeping of same, and it shall be the duty of all telephone companies within the state to keep accounts, books of accounts, records and memoranda in the manner and form prescribed by the said commission, and in no other manner and form: Provided, however, That no such regulation shall Proviso. be in duplication of or in addition to any regulations covering the same subject matter made by the government of the United States or any municipality of this state.

(756) SEC. 21. Each person, copartnership, corporation Rates, etc., schedule, filing of, etc. or telephone company operating telephone lines and facilities within the state shall have on file and accessible to the public in the principal place of business of such person, copartnership or corporation, a schedule of rates, charges and tolls made, charged or collected by said person, copartnership or corporation for service rendered, furnished or performed, and for joint service rendered, furnished or performed, and at every exchange or toll station a schedule of rates, charges and tolls made, charged or collected by any such person, co-

partnership or corporation for service rendered, furnished or performed, and for joint service rendered, furnished or performed in connection with said exchange or toll station, and it shall be the duty of each person, copartnership or corporation, operating telephone lines or facilities within the state to file with the commission a copy of each such schedule. It shall be unlawful for any person, copartnership or corporation owning telephone lines, facilities, or transacting a telephone business within this state, to neglect or refuse to have such schedule on file, or to neglect or refuse to file a copy of the same with the commission, and it shall be unlawful for any person, copartnership or corporation operating telephone lines and facilities, and transacting a telephone business within the state, to make any other or different charge for service than that shown in such schedule.

Penalty for violations.

(757) SEC. 22. If any person, copartnership or corporation, operating telephone lines and facilities and conducting a telephone business within this state shall violate any of the provisions of this act, or shall thirty days after the establishing or fixing thereof, have failed, neglected or refused to observe any rate, charge, toll or order fixed or established by the commission, unless the enforcement of the same shall have been enjoined by a court of competent jurisdiction, or shall do or commit any other thing or act in this act declared to be unlawful, such telephone company shall forfeit and pay to the state of Michigan for the first offense not less than fifty dollars nor more than one thousand dollars, and for each subsequent offense shall pay not less than one hundred dollars nor more than two thousand dollars. Any penalty herein provided for shall be collected under the direction of the attorney general in an action of assumpsit.

Complaints pending, etc.

(758) SEC. 23. All complaints made and now pending before the commission, and all investigations, examinations and proceedings undertaken, commenced or instituted by the commission, may be heard, conducted and continued to final determination, and all pending actions or proceedings brought by or against said commission may be prosecuted or defended in the same manner, under the same terms and conditions, and with the same effect as though conducted or continued under the provisions of act number one hundred thirty-eight of the public acts of nineteen hundred eleven.

Examiners, etc.

(759) SEC. 24. The commission is hereby authorized and empowered to employ such clerks, inspectors, examiners and experts as may be necessary to carry out and administer the provisions of this act.

Sections independent.

(760) SEC. 25. Every provision of this act, every section and every part of every section is hereby declared to be independent in so far as this relation shall be necessary to the validity of this act, and the fact that any provision, section,

or part of any section is void shall not be held to invalidate any other portion of this act.

Sec. 26 repeals the provisions of act number one hundred thirty-eight of the public acts of nineteen hundred eleven, and every other provision in conflict herewith.

An Act to provide for the incorporation and regulation of companies to insure railway conductors, railway engineers and railway officials for the loss of position arising from discharge or retirement.

[Act 37, P. A. 1915.]

The People of the State of Michigan enact:

(761) SECTION 1. Any number of persons not less than five, desiring to become a body corporate for the purpose of insuring railway conductors, railway engineers and railway officials for loss of position resulting from discharge or retirement, may, by complying with the provisions of this act, become a body corporate for the purpose herein stated. Number of incorporators.

(762) SEC. 2. The persons proposing to form such corporation shall associate by signing articles of association in duplicate and acknowledge the same before any notary public or officer of this state, duly authorized to take acknowledgment of deeds. Articles of association.

(763) SEC. 3. Such articles of association shall state: Contents of articles.

(a) The names of the persons associating in the first instance and their respective residences;

(b) The name by which such corporation shall be known;

(c) The period for which the company is incorporated which shall not exceed thirty years;

(d) The number of directors which shall not be less than five, nor more than eight, and the names of the directors chosen for the first year;

(e) The place where the main office of the company shall be located, which shall be within the state of Michigan;

(f) The object of the corporation.

(764) SEC. 4. The amount of capital stock of any company organized under the provisions of this act shall not be less than twenty-five thousand dollars, the par value of all shares of stock to be one hundred dollars. Capital stock.

(765) SEC. 5. Any company organized under the provisions of this act shall have the right to insure railway conductors, railway engineers and railway officials in an amount not exceeding five hundred dollars for loss of position arising from discharge or retirement, on such terms and conditions and subject to such rules and regulations as shall be prescribed in the by-laws of any such company, which by-laws shall be printed in full and constitute a part and portion of each policy or insurance contract issued. Kind of business.

Capital paid in.	(766) SEC. 6. No company shall be incorporated under the provisions of this act until the total amount of authorized capital stock is subscribed for and until at least one-half of the total amount of authorized capital stock is actually paid. No such company shall be authorized by the commissioner of insurance to transact business in this state until it has deposited a sum equal to at least the total amount of the authorized capital stock of the company with the state treasurer of this state. Said deposit shall consist of bonds, stocks or securities such as are required in accordance with the provisions of law governing the deposits of life insurance companies in this state. The deposit so required to be made with the state treasurer shall be held for the security and protection of any person insured under the provisions of this act and if any such company shall go out of business, such deposit shall be returned in accordance with the provisions of the life insurance law of this state.
Authority to do business.	
Deposit of securities.	
When deposit returned.	
Articles, how approved.	(767) SEC. 7. When the articles of incorporation of any such company shall be executed, they shall be submitted to the commissioner of insurance for his approval. If the commissioner of insurance shall find that the articles conform to the provisions of this act, he shall thereupon approve same and endorse a certificate to that effect, and attach same to said articles. Upon the filing of said articles and the endorsement of the commissioner of insurance, with the commissioner of insurance, and with the county clerk of the county in which the main office of the company is by its articles located, the persons executing such articles shall thereupon become a body corporate for the purposes set forth in this act, and shall have the right to carry on and conduct the business of insurance as herein indicated. Any such company shall have the right to take over the business of, or reinsure any other company, mutual, co-operative, or otherwise, conducting a business similar to that herein authorized.
Where filed.	
To become body corporate.	
Reinsurance.	
Board of directors.	(768) SEC. 8. The business and affairs of the corporation shall be managed by the board of directors. The directors shall be chosen from among the stockholders annually at a meeting of the stockholders of said company to be held on the second Wednesday of January each year, and shall hold office until their successors are elected and have qualified.
By-laws.	(769) SEC. 9. The directors of any company organized under the provisions of this act shall have power to enact by-laws for the management of the business of the company, which by-laws shall not be inconsistent with the provisions of this act.
Officers.	(770) SEC. 10. The officers of any company organized under the provisions of this act shall be chosen from among the directors and shall consist of a president, one or more

vice-presidents, a secretary and treasurer. The offices of secretary and treasurer may be held by one person. Service of process shall be made upon the president or secretary of the company; upon an attorney who shall be appointed for the purpose of receiving process or upon the commissioner of insurance. Each company organized under the provisions of this act, as a condition precedent to the renewal of an annual certificate to do business to be issued by the commissioner of insurance in accordance with the law governing insurance companies shall make and file in the office of the commissioner of insurance annually, such statement as is required by and in accordance with the provisions of act one hundred thirty-three of the public acts of nineteen hundred nine, which statement shall set forth the condition of business of such company up to and including December thirty-first of the preceding year.

Service of
process.

Annual state-
ment.

(771) SEC. 11. It shall be unlawful for any person to act within this state as agent in receiving or procuring applications or in any manner directly or indirectly to aid in transacting the business of insurance permitted by this act, without procuring from the commissioner of insurance a certificate of authority to be governed by the provisions of law in force relative to life insurance companies in the state.

Agent to
procure cer-
tificate.

(772) SEC. 12. Such provisions of act seventy-seven of the public acts of eighteen hundred sixty-nine, as amended, and of act two hundred thirty-seven of the public acts of eighteen hundred eighty-one as are not inconsistent with, or in conflict with provisions of this act, are hereby made applicable to the operation of any company organized under the provisions of this act.

Laws made
applicable.

(773) SEC. 13. Any person violating any of the provisions of this act shall be deemed guilty of misdemeanor and upon conviction thereof shall be fined in a sum not more than five hundred dollars, or be imprisoned in the county jail not more than ninety days, or both such fine and imprisonment in the discretion of the court.

Penalty.

CHAPTER X.—CRIMINAL LAWS AFFECTING RAIL-ROAD COMPANIES AND THEIR PROPERTY.

OFFENSES AGAINST PROPERTY.

[Extracts from R. S. 1846, ch. 154.]

Burglary from cars, etc.

(774) § 11547. SEC. 12. Every person who shall break and enter, in the night-time, any office, shop, store, saloon, railroad depot, warehouse, mill, school-house or factory, not adjoining to or occupied with a dwelling-house, or any railroad car, shop, boat or vessel within the body of any county, with intent to commit the crime of murder, rape, robbery, or any other felony or larceny, shall be punished by imprisonment in the state prison not more than fifteen years.

Koster v. People, 8 / 431; Drennan v. People, 10 / 174; People v. Nolan, 22 / 229; Dennis v. People, 27 / 151; Byrnes v. People, 37 / 515; Bickford v. People, 39 / 209; Hall v. People, 43 / 417; People v. Bielfus, 59 / 576; People v. Calderwood, 66 / 92; People v. Griffin, 77 / 585; People v. Parrow, 80 / 567; People v. Hamaker, 92 / 14; People v. Tracey, 121 / 318; In re Leonard, 137 / 457; People v. Wycoff, 150 / 449; People v. White, 153 / 617. There can be no conviction where the testimony identifies neither place, person nor property.—People v. Butler, 55 / 408. A store located upon the ground floor of a building and having no indoor communication with the rooms above, which are occupied as a residence is not "adjoining to or occupied with a dwelling house."—People v. Van Dam, 107 / 425; People v. Burke, 161 / 397; People v. Brott, 163 / 150.

Idem.

(775) § 11548. SEC. 13. Every person who shall enter in the night-time, without breaking, or shall break and enter in the day-time, any dwelling-house, or any outhouse thereto adjoining, kept therewith, or any office, shop, store, saloon, restaurant, barn, granary, railroad car, railroad depot, warehouse, mill or factory, or any ship, boat, or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, or any other felony or larceny, the owner or any other person lawfully therein being put in fear, shall be punished by imprisonment in the state prison not more than ten years.

Pitcher v. People, 16 / 147; People v. Hamaker, 92 / 14. See Drennan v. People, 10 / 173-4.

Idem.

(776) § 11549. SEC. 14. Every person who shall enter any dwelling-house in the night-time, without breaking, or shall break or enter in the day-time, any dwelling-house, or any outhouse thereto adjoining and occupied therewith, or any church, office, shop, store, saloon, restaurant, barn, granary, railroad car, railroad depot, warehouse, mill, school-house or factory, or any ship, boat or vessel lying within the body of any county, with intent to commit the crime of murder, rape, robbery, or any other felony or larceny, shall be punished by imprisonment in the state prison not more than five years, or by a fine not exceeding five hundred dollars

and by imprisonment in the county jail not more than one year: Provided, That every person who shall unlawfully break into any railroad freight car, or unlawfully enter the same without breaking, with intent to obtain carriage in such car, the same being a part of a freight train, shall be punished by a fine not exceeding fifty dollars, or imprisonment in the county jail not more than sixty days, or both such fine and imprisonment. Proviso, stealing a ride in a freight car.

Drennan v. People, 10 / 174.

(777) § 11583. SEC. 47. Every person who shall wilfully and maliciously break down, injure, remove or destroy any public or toll bridge, or any railroad, or any turnpike gate, or any lock in any dam, or any lock, culvert or embankment of any canal, or who shall wilfully and maliciously make any aperture or breach in any such embankment, with intent to destroy or injure the same, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year. Penalty for injury to railroad gates.

(778) § 11586. SEC. 50. Every person who shall wilfully or maliciously break down, injure, remove, or destroy any monument erected for the purpose of designating the boundaries of any township, or of any tract or lot of land, or any tree marked for that purpose, or shall so break down, injure, remove or destroy any milestone, mileboard, guidepost or guideboard, lawfully erected upon any highway, or other public way, turnpike, or railroad, or shall wilfully or maliciously deface, or alter the inscription on any such stone, post or board, or shall wilfully or maliciously mar or deface any building or signboard, or extinguish any lamp, or break, injure, destroy or remove any gas lamp, oil lamp, electric light globe or bulb, or any railing or lamp post, telephone post or telegraph post erected on any bridge, sidewalk, street, highway, court or passage, or any post, pole or tower used to support any telephone, telegraph, electric light, or electric transmission line, or any wire, insulator or other fixture attached to any such post, pole or tower, or shall wilfully or maliciously injure, remove, deface or destroy any switch, target, signal, sign or shelter erected or being upon any railroad right of way, or any board or structure lawfully erected or used for the posting of bills, posters or other notices, or shall wilfully or maliciously mutilate, deface or destroy any bill, poster, or other printed or written notice lawfully posted on any board or structure used for that purpose, without the consent of the owner or occupant thereof, shall be punished Penalty. by imprisonment in the county jail not more than three months, or by fine not exceeding fifty dollars, or both fine and imprisonment in the discretion of the court.

Am. 1913, Act 280.

Ross v. Leggett, 61 / 446.

Penalty for removing goods from railroad depots or warehouses without the license of the owner.

(779) § 11587. SEC. 51. Every person who shall wilfully commit any trespass, by cutting down or destroying any timber or wood, standing or growing on the land of another, or by carrying away any kind of timber or wood, cut down or lying on such land, or by digging up or carrying away any stone, ore, gravel, clay, sand, turf or mould from such land, or any roots, fruit or plant there being, or by cutting down or carrying away any grass, hay, or any kind of grain standing, growing or being on such land, or by carrying away from any wharf or landing place, railroad depot or warehouse, any goods whatever in which he has no interest or property, without the license of the owner, of the value of five dollars or more, shall be punished by imprisonment in the county jail not more than sixty days, or by fine not exceeding one hundred dollars.

Wilson v. Bowen, 64 / 133.

CONSTRUCTING RAILROADS THROUGH BURYING GROUNDS.

[Compiled Laws of 1897, Section 11712.]

Penalty for building roads through burial grounds.

(780) § 11712. SEC. 23. If any person shall open or make any highway, or shall construct any railroad, turnpike or canal, or any other thing in the nature of a public easement, over, through, in or upon, such part of any enclosure, being the property of a township, city, religious society, or of any other body corporate, or of private proprietors, as may be used or appropriated for the burial of the dead, unless an authority for that purpose shall be specially granted by law, or unless the consent of such township, city, religious society, body corporate or proprietors respectively, shall be first obtained, he shall be punished by fine not exceeding two thousand dollars, or imprisonment in the county jail not more than one year.

Ayers v. Richards, 38 / 216.

An Act to provide a punishment for getting on board of railroad trains when in motion.

[Act 31, P. A. 1883.]

The People of the State of Michigan enact:

Getting on board moving railroad trains prohibited.

(781) § 11533. SECTION 1. That no person shall jump or step on board of any railroad train, locomotive or car when in motion, except employes and passengers at railway stations; and any person who shall offend against any of the provisions of this section, shall be punished by a fine of not exceeding ten dollars, with costs of suit, and in default of

the payment of such fine, shall be imprisoned in the county jail for a term of not exceeding thirty days.

An Act authorizing a prosecution for larceny committed in any railroad car while in this state, and enroute, in any county through which said car passes.

[Act 314, P. A. 1887.]

The People of the State of Michigan enact:

(782) § 11633. SECTION 1. That every person who shall commit the crime of larceny in a railroad car while in the state of Michigan, and enroute, shall be liable to prosecution in any county through which said car passes, and any court of competent jurisdiction of said county shall have jurisdiction to try and determine said cause the same as though said offense had been committed in the county where the complaint is made.

Larceny in
railroad car.

Jurisdiction
of court.

People v. Brock, 149 / 464.

An Act to provide a punishment for wrecking or attempted wrecking of railroad trains within this state, and for robbery or attempted robbery on said trains.

[Act 171, P. A. 1897.]

The People of the State of Michigan enact:

(783) § 11634. SECTION 1. That any person or persons who shall wilfully and maliciously place upon any railroad track any obstruction, or who shall change any switch or track, or remove any spikes or rails from any railroad track, or who shall change the brakes upon any cars standing on any railroad track in this state, for the purpose of wrecking said railroad train or trains, shall be deemed guilty of a felony, and on conviction thereof shall be punished by imprisonment in the state prison at hard labor for life, or for any term of years not less than five, in the discretion of the court.

Attempted
wrecking of
railroad
trains de-
clared a
felony.

Penalty.

(784) § 11635. SEC. 2. That any person or persons who shall wilfully and maliciously, with intimidation or threat of life with firearms, dynamite, or other dangerous devices, stop a railroad train, or cause the officers or employees of said railroad company to stop or leave the train, or detach the train one part from another, or compel the engineer or fireman to

Forcible de-
tention of
railroad
train, etc., for
purpose of
robbery.

run the train contrary to their general order, or any part thereof in this state, for the purpose of wrecking or robbing said train, or the passengers or employes thereon, or the express or mail cars of such train, shall be deemed guilty of a felony, and on conviction thereof shall be punished by imprisonment in the state prison at hard labor for life, or for any term of years not less than five, in the discretion of the court.

Penalty.

Entering
trains or cars
for purpose of
robbery.

(785) § 11636. SEC. 3. That any person or persons who shall enter upon any railroad train, passenger car, mail car, or express car, with intent to rob said railroad train, passenger car, mail car, express car, or the passengers or employes on said cars, by means of intimidation or by threat of life to the passengers or employes upon said cars or in charge of said cars in this state, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison at hard labor for life, or for any term of years not less than five, in the discretion of the court.

Penalty.

An Act to define certain offenses affecting railroads, and to provide punishment for the same.

[Act 164, Laws of 1869.]

The People of the State of Michigan enact:

Obstructing
or displacing
track, how
punished.

(786) § 11623. SECTION 1. That every person who shall place upon any railroad any timber, stone, iron or other obstruction, or who shall loosen or displace any rail of the track of such railroad, or shall break down or displace, destroy or injure any bridge, culvert or embankment of any railroad, or do any other act with intent to endanger the safety of any person traveling or being upon such railroad, or to throw from such railroad any locomotive, tender, or car moving along the track of such railroad, on which shall be any person or property liable to be injured thereby, shall be punished by imprisonment in the state prison for life, or for a term of years.

Stealing from
cars or pas-
sengers de-
tained by
accident.

(787) § 11624. SEC. 2. Every person who shall steal from any car, while detained by accident or injury to any railroad, locomotive, tender or car, or who shall steal the property of, or rob any person detained, injured or killed by reason of any accident or injury to any such railroad, locomotive, tender or car, shall be punished by imprisonment in the state prison for a term not exceeding twenty years, or by fine not exceeding three thousand dollars, or both fine and imprisonment, at the discretion of the court.

(788) § 11625. SEC. 3. If any person, not being employed on any railroad, shall wilfully and maliciously uncouple or detach the locomotive or tender, or any of the cars of any railroad train, or shall in any way aid, abet, or procure the doing of the same, such person shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding two thousand dollars, or both, at the discretion of the court.

Malicious uncoupling of cars.

(789) § 11626. SEC. 4. If any person shall unlawfully seize upon any locomotive, with any express or mail car attached thereto; and run away with the same upon any railroad, or shall aid, abet, or procure the doing of the same, such person shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding two thousand dollars, or both, at the discretion of the court.

Running away with locomotives to which express or mail cars are attached.

(790) § 11627. SEC. 5. If any officer, agent, clerk or employe of any incorporated railroad company shall fraudulently embezzle, dispose of or convert to his own use any passenger railroad ticket or tickets, whether such tickets are fully prepared for use, or not so fully prepared, or use tickets which have been once used, and which have come to his hands or charge by virtue of his office or employment, he shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars, or both, at the discretion of the court. In any prosecution under this section, it shall be lawful to include in a charge, as one offense, all acts constituting such offense committed between certain days set forth, and it shall be sufficient to set forth by general description the tickets alleged to have been unlawfully taken; and it shall be sufficient to maintain the charge if it shall be proved on [the] trial that any such ticket or tickets were, within the period set forth, embezzled, disposed of, or converted by the defendant charged in said prosecution as alleged.

Penalty for embezzlement of railroad tickets.

What may be included in a charge under this section.

The conversion by an employe of transfer checks of a street railway company is not an embezzlement of railroad tickets within the terms of this section.—People v. Beebehyser, 157 /239.

(791) § 11628. SEC. 6. Any director or other officer of any incorporated railroad company, who shall make or issue any unauthorized, or a fraudulent certificate of stock, bond, or obligation of such company, or who shall aid, abet, procure, or consent to any such making or issuing, knowing the same to be unauthorized and fraudulent, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding five thousand dollars, or both, at the discretion of the court.

Issue of fraudulent stock, how punished.

(792) § 11629. SEC. 7. Every person who shall feloniously or fraudulently take and carry away any passenger railroad ticket or tickets belonging to any railroad company or companies, shall be punished by imprisonment in the state

Penalty for fraudulently taking railroad tickets.

prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, at the discretion of the court.

Penalty for
forging
tickets.

(793) § 11630. SEC. 8. Every person who shall falsely make, forge, or counterfeit any railroad passenger ticket, purporting to be made or issued by any railroad company or companies doing business within or without this state, with intent to injure or defraud, or who shall with like intent, alter any railroad passenger ticket made or issued by any such railroad company or companies, shall be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, at the discretion of the court. Any change of any such ticket made or issued by any railroad company or companies, if made with intent to injure or defraud, whether made by writing, printing, stamping, punching, obliteration, or otherwise, shall be deemed an alteration within the meaning of this section.

In what to
consist.

Sufficiency of information under this section.—People v. Smith, 125 / 566.

Penalty for
selling false
tickets.

(794) § 11631. SEC. 9. Every person who shall sell, or offer to sell or who shall have in his possession with intent to sell, any such false, forged, altered, or counterfeit railroad passenger ticket, mentioned in the preceding section, knowing the same to be false, forged, altered, or counterfeit, shall be punished by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, at the discretion of the court.

See note to preceding section.

How words
"railroad pas-
senger tick-
ets" to be
construed.

(795) § 11632. SEC. 10. The words "railroad passenger ticket or tickets," as used in the preceding sections of this act, shall be construed to embrace any ticket, card, pass, certificate, or paper providing, or intended to provide, for the carriage or transportation of any person or persons upon any railroad, and shall include, not only tickets of any railroad company fully prepared for use, but those not fully prepared for use, and all others which have been once used. At the trial of any case arising under the preceding sections, it shall be sufficient prima facie proof of the existence of any railroad company named in the information or indictment to show that such company was doing business as a railroad company at the time named in the information or indictment.

What to be
prima facie
evidence.

An Act making it a misdemeanor to throw any stone, brick or other missile at any passenger train, sleeping car, passenger coach, express car, mail car, baggage car, or any street or trolley car, and providing a penalty therefor.

[Act 246, P. A. 1907.]

The People of the State of Michigan enact:

(796) SECTION 1. Any person who shall throw any stone, brick or other missile at any passenger train, sleeping car, passenger coach, express car, mail car, baggage car, or at any street car or trolley car, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not to exceed one hundred dollars or by imprisonment in the common jail of not to exceed ninety days, or by both such fine and imprisonment in the discretion of the court.

Unlawful to throw missile at train, etc. Penalty.

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